

The judgment of the Court (BOYD, C., STREET, J., MABEE, J.), was delivered by

BOYD, C.:—The Court of Appeal discharged the prisoner from custody on the ground that there was no proper evidence of the commission of alleged offence, or identifying the document with the forgery of which prisoner was charged

. . . Re Harsha, ante 97, 103.

In Regina v. Ganz, 9 Q. B. D. at p. 105, Manisty, J., says: "In order to give the magistrate jurisdiction there must be a crime charged which is within the treaty, and the magistrate must have before him evidence such as would justify according to the law of England (Canada) the committal for trial of the prisoner if the crime had been committed in England, and there must be a foreign warrant authorizing the arrest," etc.

In this case the crime charged in the first warrant was that of forgery, and no doubt the same crime is charged in the second warrant. But now it is proved that further additional and new evidence has been discovered or will be forthcoming whereby the deficiencies pointed out may and no doubt will be remedied. Having regard to the character and nature of extradition proceedings, it appears perfectly competent to take this course, and no rights of the prisoner and no safeguards of the law are thereby invaded.

The law is very distinct that when there is no evidence or no sufficient evidence before the magistrate in these extradition matters, he is held to be without jurisdiction, and a committal for surrender is, in such conditions, an unwarrantable act in excess of his jurisdiction: Regina v. Maurer, 10 Q. B. D. 515, 516.

The magistrate is charged with the duty of considering whether the evidence before him is sufficient according to law to justify the committal of the accused for trial; he is not to determine and dispose of the case by giving judgment upon it, but he states his opinion . . . that there is a prima facie case, and on that ground issues his warrant of committal for the purposes of surrender to the foreign country; and in that forum the trial takes place, and the guilt or innocence of the accused is established: see per Hawkins, J., in Re Castioni, [1891] 1 Q. B. 161.

The doctrine of *res judicata* or of former jeopardy or of *autrefois acquit* is in each particular quite inapplicable to this method of preliminary inquiry. Had the magistrate thought the first evidence laid before him insufficient and de-