

U. S. Rep.]

IN THE MATTER OF THOMAS PRIMROSE, &C.

[U. S. Rep.]

UNITED STATES REPORTS.

Before U. S. Commissioner GEORGE GORHAM, Esq.

Reported for the Law Journal by F. W. MACDONALD, Esq.,
Barrister-at-Law.IN THE MATTER OF THE APPLICATION OF THE
CANADIAN GOVERNMENT FOR THE EXTRADITION
OF THOS. PRIMROSE, A FUGITIVE FROM JUSTICE.*Extradition—Robbery—Holding accused without process—
Proceedings before U. S. Commissioner—Questions of fact
for jury—Reasonable and probable cause—Trial by foreign
courts.*

On the 1st day of April, 1870, at Westminster, Ontario, one John Smith was assaulted and robbed by Thomas Primrose and others. Primrose fled, and was, on the 9th day of August, 1870, arrested in Buffalo, and immediately thereafter brought before Judge Burrows, on a writ of *habeas corpus*, and his discharge asked for, on the ground that he was detained without legal process. He was, however, held under this writ until the 27th day of December, 1870, on evidence being adduced that an application was being made by the Canadian Government for his extradition; and on that day, a mandate for his examination having arrived from the President, the writ was discharged, and prisoner taken into the custody of the United States Marshal, on a warrant issued by United States Commissioner Gorham.

Certified copies of depositions taken in Canada were filed with the Commissioner, and evidence adduced *pro* and *con*.

Held by Commissioner: 1. That his duty was merely that of a committing magistrate, and that he had only to enquire whether there was probable cause to believe that the crime of robbery had been committed, and that accused committed the crime.

2. That questions of fact were the exclusive province of a jury.

3. That the fact that Primrose, if held for extradition, is to be taken away to be tried in the courts of a foreign country, ought not to influence his decision one way or the other.

4. That he had entire confidence that accused would receive a fair trial in Canada: to suppose otherwise would be unjust and discourteous.

5. That the Extradition Treaty should be construed liberally and fairly to the prisoner; and while every reasonable opportunity should be given to the foreign power seeking the benefit of the treaty, the prisoner should not be remanded for trial unless there is a *prima facie* case against him, which is not overborne by the evidence adduced on his part.

[Buffalo, U.S., Dec. 20, 28, 1870.]

The prisoner, Thomas Primrose, was charged with having, on the evening of the 1st day of April, 1870, at Westminster, county of Middlesex, Ontario, in company with others, assaulted and robbed one John Smith, and of being accessory to the murder of one John Dunn. He was arrested in Buffalo in August last; and was subsequently brought before Judge Burrows, of that city, on a writ of *habeas corpus*, and his discharge asked for, on the ground of illegal detention, no process having been issued for his arrest. But in view of an application having been made for his extradition by the Canadian Government, and evidence as to that fact being given, he was from time to time remanded to jail, to await the mandate from the President for his examination before a United States commissioner; which mandate subsequently arriving, addressed to United States Commissioner George Gorham, informations were thereupon laid before the commissioner, charging the said Thos. Primrose with the said offences of robbery and murder; and the commissioner issued his warrant, addressed to the United States Marshal, commanding him to take the said Primrose into his custody upon the said charges, and bring him before the said commissioner for examination thereon. The above facts having been made appear in a

return to the said writ of *habeas corpus*, the same was thereupon discharged, and the examination of the said Thomas Primrose, upon the charge of the robbery of one John Smith, was then proceeded with before the said commissioner, counsel for claimants declining to offer evidence upon the charge of murder.

The following copies of the original information, taken before Lawrence Lawrason, Esq., police magistrate, at London, and warrant issued thereon, duly certified to be true copies by the said police magistrate, were filed with the commissioner on behalf of the claimants:

CANADA, } I, Lawrence Lawrason,
Province of Ontario, } of the City of London, in
County of Middlesex. } the County of Middlesex,
To wit. } in the Province of Ontario,
and Dominion of Canada, one of Her Majesty's
Justices of the Peace in and for the said County,
do hereby certify that the paper writing annexed
hereto, and marked A, is a true copy of the
original information or deposition, taken before
me, by John Smith, on complaint against Thomas
Primrose and others for the crime of robbery:
and I further certify that upon the laying of such
information or deposition, I did issue a warrant
for the arrest of the said Thomas Primrose and
others therein mentioned: and I certify that the
paper writing hereto annexed, marked B, is a
true copy of the warrant so issued by me as
aforesaid, and that the same was duly delivered
into the hands of Thaddens VanValkenburgh, a
constable for the said County, to be by him executed
according to law: and I further certify
that the said original information or deposition
is in my possession, and that the said constable
has the said original warrant. And I also certify
that the annexed copies of deposition and
warrant are hereby properly and legally authenticated,
so as to enable them to be received in evidence,
in the tribunals of Canada, of the criminality of the person charged therein of robbery.

Given under my hand, at the City of London, in the Province of Ontario, and Dominion of Canada, this 26th day of September, A.D. 1870.

(Signed) L. LAWRASON,
J. P. & P. M.

and further certified by the principal diplomatic or consular officer of the United States resident in Canada, as follows:

CANADA, } I, William H. Calvert, of
Province of Quebec, } the City of Montreal, Domi-
City of Montreal. } nion of Canada, Vice-Con-
sul-General of the United States of America,
and being the principal diplomatic or consular
officer of the United States of America at present
residing in Canada, do hereby certify that
Lawrence Lawrason, of the City of London, in
the County of Middlesex, Province of Ontario,
and Dominion of Canada, Esquire, was, on the
first day of April, in the year of our Lord
1870, and from that time up to the present has
continued to be, and still is, a Justice of the
Peace in and for the County of Middlesex, in the
said Province of Ontario, and, as such Justice of
the Peace, was and is duly authorized to hear all
complaints of felony and misdemeanor, and take
informations, and grant warrants thereon: and
I do hereby further certify that he is by the laws