charge, arising out of the bankruptcy of the prisoner, upon which it appeared the prisoner had been arrested, and that Patton and Horton had became bail for him in the charge. The prisoner was remanded to the 31st December, when Warren was again examined, and a certificate being shewn to him, he stated it was a certificate of one John W Pettingill, Trial Justice for the County of Middlesex; he proved this certificate, and that he Pettingill was a Trial Justice—no evidence was given as to what was meant by a Trial Justice. The certificate was dated 28th December, 1869, and it certified "that the within complaint and warrant are true copies of the original complaint and warrant before me; also, that the within named John O. Robinson hath not appeared or pleaded to the said complaint since the date of the same." Attached to this certificate was a complaint—commencing as follows: "To John W. Pettingill, Esq., a Trial Justice, &c., Calvin Horton on behalf of the commonwealth of Massachusetts, on oath complains, that John O. Robinson, &c., on the 18th of May, 1869, &c., the dwelling house of one Barrett, in Somerville, &c, feloniously &c., set fire to &c.,"—and he prayed that he might be apprehended and held to answer to said complaint, &c.—underneath, on the same sheet was warrant to take the prisoner and bring him before the said Trial Justice, or any other Trial Justice, in any Police Court, &c., to answer to the foregoing complaint of Calvin Horton &c. The witness stated that he saw the original warrant and information in September last; that he compared the copy made then with the original information and warrant, and he said he knew the copies produced to be true copies; he stated however, that he never compared them with the original, nor did he see them compared.

The prisoner called witnesses, from whose testimony it appeared that he left the United States on account of the charge arising out of his bankruptcy, and that Horton and Patton were his bail, and that Horton boasted he would have the prisoner brought back: that the house in question was only partially injured by fire on 19th April last. The person who contracted to build the house was also examined. The house was not finished but in course of construction at time of fire, and no person resided in it at the time; other evidence was given to shew that the owner Barrett was suspected to have burnt it. Upon this evidence the Police Magistrate committed the prisoner for the purpose of his extradition.

D. B. Read, Q. C., and *Dr. McMichael* for the prisoner, took various objections to the proceedings:—The information upon which the Police Magistrate acted was insufficient, and did not warrant him to order the arrest of the prisoner, and the subsequent proceedings: that the depositions of Patton, Horton, and Fingay, taken in the United States, were not depositions that could be used or received as evidence of the criminality of the prisoner: that if they were receivable they were not properly certified and attested: that the complaint and warrant made before and issued by the Trial Justice were not receivable, being only copies of copies, and that no explanation or proof was given of the duties or authority of a Trial Justice: that it appeared that the prisoner was not guilty of arson, the building set fire to being an unfinished and unoccupied house, and not the subject of arson, and that the warrant under which the prisoner was now detained was insufficient, in not stating whose house the prisoner set fire to.

John Patterson on the part of the Minister of Justice, contended that the depositions were such as could be received, and that they were properly before the Police Magistrate.

Morrison, J.—The first and most material point for determination is whether there appears upon these papers returned before me, as provided by the statute 31 Vic. c. 94, s. 1, of the Dominion (Reserved Act, see stat. 32,33 Vic. p. 12) such evidence, as, according to the laws of this Province, would justify the apprehension and commital for trial of the prisoner if the crime had been committed here. Under the statute it is the duty of the officer (in this case the Police Magistrate), to examine upon oath, any person or persons, touching the truth of the charge; and by sec. 2, in addition, it is provided, that upon the return of the warrant of arrest, copies of the depositions upon which the original warrant was granted in the United States, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended. In this case no oral testimony was given by any witness touching the truth of the charge against the prisoner; all that was done was the laying of an information by an officer who deposed that he was informed and believed, that the prisoner did burn and consume a certain house, without stating whose house it was, on the 19th April, 1869.

The truth of the charge must therefore wholly depend upon the depositions upon which the original warrant was granted in the United States. On this argument it was conceded that unless the statements or depositions of Patton, Horton, and Fingay, taken before Isaac S. Muse, the Justice of the Peace, on the 13th December, 1869, were receivable and could be read against the prisoner, the case must fail, these depositions containing the only evidence to justify the prisoner's committal. The original, and the only warrant that appears to have been issued in the United States was the one before me, issued on the 20th September, 1869, by one Pettingill, styled a Trial Justice (whom I assume, although no explanation was given at the time, to be an officer like our Police Magistrate), upon a complaint made and addressed to him, that the prisoner on the 18th May, set fire to the dwelling house of one Barrett. As our Statute permits depositions taken in a foreign court to be read in lieu of oral testimony, and where the case depends wholly upon such depositions, we must be strict in seeing that they are depositions coming clearly within the meaning and provisions of the 2nd section of the Statute. Now the state- or depositions that were received as evidence of the criminality of the prisoner and objected to, were made on the 13th December, three months after the original warrant issued, They are not depositions made before the Trial Justice who issued the warrant, but before another officer, a Justice of the Peace. They have no caption, nor do they state or indicate in any way, on their