plete in itself; it is an acknowledgment of one bank to another of what moneys had been collected by the former for the latter—the same as a pass book of a bank is an acknowledgment of the deposits entered in it.

Another question raised by the defence in the case is: What amount of evidence is required to be adduced to commit accused? It is said that the evidence must be conclusive, according to the dictum of Judge Nelson in the *Kaine* case in 1852, or at least deemed by the magistrate sufficient to sustain the charge according to the treaty. With regard to Judge Nelson's remark it might be correct under the law in the United States as it existed then, but it is not in conformity with our latest decisions nor our present statute on extradition. It is said that our statute cannot change the treaty. I quite admit that we could not change, by legislation, any essential part of the treaty, such as substituting one offence for another; or restrict its operation in any way. But our statutes can interpret and give effect to the provisions of the treaty, provided it is done in a liberal spirit and in such a manner as to extend its usefulness. The other contracting nation could not complain of our action or of our bad faith. On looking at article 10 of the treaty where it speaks of the evidence required, it says in one place, that it must be sufficient to *justify* the committal for trial, at another place that it must be deemed sufficient to *sustain* the charge. I do not see much difference between the two expressions. I think the procedure indicated by our Act is intended to carry out fairly the wording of this article of the treaty. If the pretensions of the defence were correct, both nations are wrong in admitting as evidence, depositions taken in a foreign country; there is nothing in the treaty to warrant it, and the proof should, as in ordinary cases, be made only by witnesses. In the *Rosenbaum* case, Judge Ramsay said: "Although the "evidence is not perfectly conclusive, I do "not think I could discharge the prisoner." Chief Justice Dorion in the *Worms* case, says: "Our Act requires that the evidence of cri- "minality be such as, according to the laws "of this country, would justify his apprehen- "sion and trial if the crime had been com- "mitted here; and when the authorities in "the country where the offence was com- "mitted have declared, by the issue of a "warrant for the apprehension of an offender, "that the acts complained of constitute an "extradition offence according to their law, "it only remains for the authorities here to "examine whether the same, if committed "here, would, under our law, justify the ar- "rest and trial of the accused for the same "offence."

Clarke, page 177, says: "In England when "the fugitive is apprehended, he is brought "before the magistrate, who hears the case "in the same manner as if the prisoner were "charged with an indictable offence com- "mitted in England. "At p. 179, "And if such "evidence is produced as would, according to "the law of England, justify the committal for "trial if the crime had been committed in "England, the magistrate is required to com- "mit." At p. 181, "The practice in Canada is "similar to that of England." At p. 182, "In "the United States, the State department re- "quires *prima facie* evidence of the guilt of "the person accused.....If the deposi- "tions show that documents alleged to have "been forged have been produced to the de- "ponent, such documents need not be pro- "duced before the magistrate."

Then, if this is the interpretation given to this clause of the treaty by both countries, I don't see any reason to put a less liberal construction on it in the present case.

A question has also arisen in this case, raised by the prosecution with regard to the admissibility of the evidence adduced by the defence. I think there can be but one interpretation of s. s. 3, sect. 9, of our statute on extradition, viz: That the accused can only show that the offence is either a political one or that it is not an extradition crime. The investigation cannot take the features of a trial—and to allow any evidence to contradict that of the prosecution would amount to making a trial of the case; the investigating justice would then take the place of the jury. I have permitted, however, some evidence (Copeland) to be adduced on behalf of the accused which may not come, perhaps, in direct contradiction of the prosecution's evidence, but I believe as this evidence does not come under sec. 9, s. s. 3, I cannot attach any weight to it at this present state of the case.

After having heard the testimony of the witnesses in this cause, and looked into the numerous cases cited, I cannot come to any other conclusion but that the accused should be committed to our common jail, there to remain until surrendered to the United States authorities or discharged according to law.

J. Dunbar, Q.C., and *Wm. White, Q.C.*, for the prosecution.

W. B. Ives, Q.C., and *J. L. Terrill, Q.C.*, for the accused.