laws, and, under the pretence of being peaceable citizens, embarked on board a vessel of, to us, a neutral friendly power, with concealed arms, and by force captured the vessel, and in violation of the laws of war took from the prosecutor, a private individual and a non-combatant, a considerable sum of money. That this act of robbery was not at all necessary for them in carrying out the alleged enterprise, if they really had intended to carry it out, and therefore, taking the justification set up by the prisoner himself, on the ground put by his counsel, it failed. It was further contended on the part of the prosecution that to attempt to carry on war or commit depredations which are to be dignified with the name of war, by the aid of only twenty-five or thirty men, hundreds of miles away from the scene of military operations, in the interior of the enemy's country, remote from the sea, and to suppose that acts of plunder committed under such a pretence, would ever be considered by neutrals as belligerent acts, was to extend the rule beyond reason, though such acts might have been undertaken under the direction of the belligerent authorities, or afterwards avowed by them.

If, on a similar matter occurring in this country, I were called upon to decide whether I would discharge the prisoner or commit him for trial, I should feel bound to commit him. I should say, looking at all the facts as they are presented on either side, that the conduct of the parties, and what they said and did during the time the vessel was in their possession, was of that equivocal character that it would, in the most favorable view suggested for the prisoner, be a matter for the consideration of a jury whether they were acting in good faith in carrying out a belligerent enterprise, or whether they were not cloaking an expedition for the purposes of plunder under pretence of a belligerent enterprise, thinking in that way more readily to escape detection.

I have no doubt that this is the view that would be taken of the case in England. In the case of *Tynan and others*, in 10 L. T. N. S. 499, referred to in the argument, Chief Justice Cockburn, after stating that if the acts the prisoners were engaged in were not done with a piratical intent, but with an honest intention to assist one of the belligerents, they could not be treated as pirates, observed: "But then it is not because they assume the character of belligerents that they can thereby protect themselves from the consequences of acts really piratical. Now, here it is true that the prisoners at the time said they were acting on behalf of the Confederates, and that was equivalent to hoisting the Confederate flag. But then pirates sometimes hoist the flag of a nation to conceal their real character. No doubt, *prima facie*, the act of seizing a vessel, saying at the same time it is seized for the Confederates, may raise a presumption of such an intention; but then the circumstances must be looked at to see if the act was really done piratically, which would be for the jury, and I cannot say that the magistrate was not justified in committing the prisoner for trial." Crompton, J., in giving his judgment, said:—"I cannot say that the magistrate, in his discretion, ought not to commit them on the ground that the act done was something like a belligerent act. For looking at the surreptitious way in which the prisoners went on board and took the vessel, there was evidence before the magistrate that this was piracy. Upon this I quite concur with my lord, because it is not for us to weigh the effect of the evidence, which is for the magistrate, and all we can consider is whether there is enough to justify a commital, and I agree with my lord that we cannot say that there is not." In conclusion, he said:—"If, therefore, this was a belligerent act, the prisoners are entitled to our judgment, but if not, and I think it was not, but piracy *contra jus gentium*, in my view the case is not within the statute." Mr. Justice Blackburn said:—"It strikes me that there was such an amount of evidence of its being piracy *jure gentium*, as, if the case had been before a jury, the judge would not have been justified in withdrawing it from them" "As to the evidence, its effect would be for the jury, and though the Confederate States are not recognized as independent, they are recognized as a belligerent power, and there can be no doubt that parties really acting on their behalf would be justified. But the case is one of piracy by the law of nations, in which case men cannot be given up, because they can be tried here, or it is a case of an act of warfare, in which case they cannot be tried at all."

Entertaining the opinion I have expressed, it is my duty to declare that the learned Recorder was warranted in deciding to commit the prisoner for the purpose of being surrendered. As long as the Extradition Treaty between this country and the United States is in force, it ought to be honestly carried out, and in all cases where the evidence shows that an offence has been committed, though there may be conflicting evidence as to the facts, or different conclusions drawn from the facts, yet in those cases where we would commit for trial under a similar state of facts in this country, we are equally bound to commit to be surrendered for trial under the treaty and our statute passed to carry it out. We must assume that parties will have a fair trial after their surrender, or we ought not to deliver them up at all, or rather ought not to have agreed to do so.

In conclusion, I will merely add that if it should be necessary to go into the question how far enterprises, such as it is now contended by the parties who seized the *Philo Parsons* they were engaged in, could properly (under the circumstances attending that seizure in the inland waters bordering on this country and the United States, wholly within the jurisdiction of the two countries) be considered a belligerent act, when undertaken by such an insignificant number of persons, and in the way it was conducted by them, I would require more time to consider and discuss the question than I have as yet been able to give to it.

Hagarty, J.—The evidence against the prisoner shows that a violent act of trespass has been committed on person and property that a man has been robbed within the United States jurisdiction and that the person charged with these acts is found here. The learned Recorder has found that the evidence sufficiently warranted his being arrested and committed to abide the action of the executive under the treaty. We are asked now to