

intent to murder. [His Honour then referred to sec. 11 of the Extradition Act, and proceeded as follows]: Under this section before a judge would be warranted in committing a fugitive it would be necessary that such evidence should be produced as would according to the law of Canada justify the committal of the accused for trial for an extradition crime. It was urged upon me by counsel for the prosecution that it was beyond my duty to consider the evidence of intention on the part of the accused; that I am not authorized to consider any matter of defence that the accused may set up, nor to enter into the question of intent. That, it was said, was a matter for the trial Court. I think it is properly contended that I am not to try the case or consider matters of defence, but if upon the evidence produced by the prosecution there is not sufficient evidence to establish an intention, such intention as is necessary to make an extradition crime, I am bound to discharge the prisoner. Prisoner discharged.

Connell, K.C., for prosecution. Currey, K.C., and Carvell, for prisoner.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

MCBEAN v. WYLLIE.

[May 26.]

Nuisance—Right of private individual to prevent infringement of municipal by-law—Construction of building obstructing plaintiff's view—Injunction.

The plaintiff by injunction sought to prevent the completion of a large frame warehouse which the defendant was erecting on ground leased by him from a railway company, being part of their right of way adjoining the garden of a property owned and occupied by plaintiff as a dwelling in the city of Winnipeg. On the other side of the right of way was a strip of land, not owned by either party, sloping down to the Red River. The warehouse was situated directly between plaintiff's house and the river, and would obstruct plaintiff's view of the river. It was being constructed of wood in contravention of the fire limit by-law of the city.

Held, 1. Plaintiff had no right to the unobstructed view of the river.

2. Plaintiff had no right to enforce the fire limit by-law by injunction, as it was a by-law passed for the protection of the general public and providing for a penalty in case of its infringement, and there was no evidence to shew that the risk of fire to the plaintiff's property would be specially increased by the construction of the warehouse. *Atkinson v. Newcastle*, 2 Ex. D. p. 441, followed.