

charges the accused because he thinks their witnesses are entitled to more credit than those for the prosecution, he goes not only beyond the letter, but also, as I think, beyond the true meaning of the Act, which only confers authority on him to enquire whether the evidence of criminality is, according to the laws in force here, sufficient to sustain the charge. If he discharges because the evidence *pro* and *con.* is equally strong, and he cannot tell which side is telling the truth, he is, in my humble judgment, equally in error, because he is assuming the functions of the tribunal to which belongs the trial of the prisoner's guilt, instead of limiting himself to the question directed by the statute.

I have heard an intimation that a contrary course has been adopted in a case in this Province—that after positive testimony had been given to establish the offence charged, a witness for the accused was admitted, who swore that he, the parties accused and the witness who swore positively against them, had confederated to get possession of the money, not by an act of robbery with violence, but by the willing connivance of the person in charge of it, and who was the principal witness against the accused: in effect, that he was a *particeps criminis* in embezzling or stealing the money, which was not, therefore, obtained by robbery, and therefore the crime actually committed did not come within the treaty, and that this conclusion was arrived at, and the accused was discharged. The facts may not have been accurately stated to me, but, assuming such a case, I could not have brought myself to such a conclusion. I do not enquire what effect such evidence would or ought to have before a tribunal sitting to try the accused on a charge of robbery; but I repeat what has often been said, that we must assume that courts in other countries will be governed by the same general principles of justice which prevail in our courts; that they will give the proper weight to the evidence for the defence, as our courts would give, and that to them should be left—so far as the merits are concerned at least—the trial of those questions which would be tried in similar cases by our own tribunals. The object of the treaty is to subject parties, against whom a charge coming within the statute is sustained by sufficient evidence of criminality, to be put upon trial before the proper tribunal. It would be defeated if, on making the preliminary enquiry, the case on both sides were heard, and, in effect, so far as the execution of the treaty is concerned, were disposed of.

I decline to discharge these prisoners.

1. Because I am of opinion, that the committing magistrate had lawful authority to deal with the case.
2. Because I think there was sufficient evidence of criminality.
3. Because I think there was a sufficient warrant of commitment.
4. Because my refusal to discharge does not conclude the prisoners, for the statute confers upon a higher functionary the power to grant or to withhold the warrant for extradition.

*Order accordingly.*

## GENERAL CORRESPONDENCE.

*Can an Attorney collect a bill for professional business done in a Division Court?*

TO THE EDITORS OF THE CANADA LAW JOURNAL.

GENTLEMEN,—This seems at first sight, as asking a strange question of you, 'or any legal minds. One would suppose that the common sense of the thing—that the self-evident right of a lawyer to collect for work done in any court, or in any capacity professionally—under a responsibility as he is for his acts—would be so plain that none (much less a judge in a court) would question it. I had the misfortune, may I say? to have this question come up before a County Judge in an out county, near Toronto, lately, in trying to collect bills in two of his Division Courts, and of having the rule laid down, that he could not give me, as an attorney, the proved items of my bills, which in any other court would have been allowed. This happened in two different courts in two different suits. In both instances I produced to him and proved, at considerable expense and trouble, *written retainers, employing me to do the business charged as an attorney*, and agreeing to pay for it. Yet I was told that attorneys have no right to collect bills in Division Courts for business done therein. It struck me as strange that any man, especially a person placed in the responsible position of a judge, could have a mind so constituted, as not to be able to see that he was not only trampling on a well-known principle of law, *but much more on every principle of natural equity*. Any one who knows what equity is, knows that no client has a right to employ a man as a lawyer to do work, which he could not do—to do what is strictly professional business, such as writing a lawyer's letter, attending to examine judgments, papers, affidavits, and drawing affidavits of a special kind, and giving special directions how to serve and the time to serve—and after the work is done turn round and say, "You did the work but not in a court of record, and you shall get no pay!" Any one sitting as a judge, who ought to know what law is, ought to know that the common law of England distinguishes between professional work, skilled work, and mere manual labor. The artist is not paid, the doctor is not paid, the lawyer is not paid, nor the skilled artisan, as a mere laborer is. Why? because in all such cases the person doing the work is supposed, is