another brother, stated that he was a brakesman on the Great Western Railway, and that on the day in question his train (a construction train) arrived at London from Windsor about four o'clock, p.m, and on going on to the platform of the station he met his brother (the accused) and Gagan, and remained with them until half-past eight o'clock, p m, with the exception of an interval from a quarter past five o'clock to six, p.m., when he was at tea. Other evidence was adduced to show that Smith was not at Lively's when the alleged robbery took place. On this evidence rested the case for the defence.

In rebuttal, counsel for claimants produced the conductor of the train on which Edward Primrose was brakesman, and he testified that on the day in question he started from Windsor with his train at 10 50 a m., and did not arrive at London until 8 25 p.m.; and that Edward Primrose was with him on said train all that time, as one of his brakesmen. He also produced his time-book (kept by all conductors), in which entries were made each day of the departure and arrival of his train at each station, which bore out his testimony, and in which Edward Primrose's name was entered as brakesman on the day in question.

This closed the evidence on both sides, the taking of which had extended over several months, and on the 20th December last the case was argued before the said commissioner.

J. Cook, of Buffalo, counsel for the prisoner, moved for his discharge:—

As to the fact of the robbery having been committed, the claimants must rely altogether upon the evidence of Smith; and such being the case, Smith's evidence was contradicted in so many particulars by the evidence on the part of the defence, that it was unsafe to place implicit reliance upon it. The facts disclosed raise a very strong suspicion, if not presumption that Smith had robbed his friend Dunn, and in order to avert suspicion had accused the prisoner and other parties of the crime alleged. The commissioner must be satisfied, first, that an offence had been committed; second, that Primrose is the guilty party. The evidence produced on the part of the defence prove a complete *alibi*, and a sufficient doubt is raised as to the guilt of prisoner to entitle him to a discharge. If the commissioner should find against the prisoner he does not simply commit him to the courts of the United States, as a proper case to be presented to a grand jury of said courts, but his decision is of vastly more importance, as he would commit him to be taken to a foreign land, to be dealt with by strangers, amongst whom might be one who might regard his own safety as depending upon a conviction of the prisoner. If prisoner is extradited upon the suspicious testimony of Smith, uncorroborated as it is, where is the protection which the Government of the United States guarantees to those who are entitled to it?—for it has been well observed, that if this doctrine were to prevail, the liberty and character of every man in the country would be placed at the mercy, not of the examining magistrate (for he would have to assume that he had no discretion), but of any corrupt and infamous individual who might think proper to make a positive oath that a felony had been committed by the person whom he accused. The commissioner is to judge of the credit to be given to the witnesses who are produced to sustain the charge, and it is his duty to discharge the accused unless he is entirely convinced that there has been a *prima facie* case made out against him.

(*To be continued.*)

CORRESPONDENCE.

Will making in the Ontario Legislature.

To the Editors of the Law Journal

Gentlemen:—As I hear the Parliament of Ontario are making and changing the wills of testators, I wish to enquire of you whether it would probably be of any use for me to apply to that Honourable body to supply a deficiency in my father's will. The elder brothers of the family and my sister had each their farms given them many years ago by proper deeds, but my father kept the homestead in his own hands until his death, and disposed of it by will to my younger brother and myself, who had worked the farm from our boyhood after our brothers left home, and took care of him in his declining years, but he unfortunately got a neighbor to prepare the will, which the lawyers say is all right in every respect, except, that *there is but one attesting witness.* Do you think the Parliament would pass an act to make the will valid notwithstanding? If not, why should they not as well as change the will of the late Mr. Goodhue, of London.

Yours, &c., Neil McKellar.

[The difficulty is not so much to know what the members of the Legislature of Ontario, who have just returned to their homes, *would* have done, but rather what they *would not* have done—at least, so far as private Bills is concerned.

In the case put, there would be some show of reason for passing an Act to make the will valid, for it would probably be carrying out the wishes of the testator; whilst in the Goodhue case the collective wisdom, justice and equity of Ontario not only did not carry out the testator's carefully expressed intention, but did exactly the reverse. They felt so alarmed, however, as to the lengths this kind of legislation might lead *their successors*, and so ashamed of their part in it, that immediately after passing the Goodhue Act they passed another, giving power to the Judges to report to the House "in respect of any estate Bills, or petitions for estate Bills, which may be submitted to the Assembly." As far as precedents are concerned, there are enough and to spare for our correspondent's comfort.]—Eds. L. J.