mitted." The legal sufficiency of the evidence of criminality is to be determined by the justice. It has been argued that both the passages in the treaty, in which the sufficiency of the evidence is spoken of, have reference to the laws of this province, not merely as regards the nature of the proof that may be received, but also to the law of this province as regards the particular offence; but the court of Queen's Bench declined to adopt such an argument: (*In re Anderson*, 20 U. C. Q. B. 169.) So far as regards the means of proof, there is no doubt our law must govern. Thus, if the law of the foreign state should admit a confession extorted from a slave by violence, such evidence, when produced here, would be rejected. So if the law of the foreign state should allow evidence of a freeman, not under oath, to be admitted against a slave charged with having committed a crime against a freeman, no justice would act on such evidence here. (*Ib.*)

The treaty specifies no particular magistrates. It declares that "the respective judges and *other* magistrates of the two countries shall have power, &c. There is a great difference between magistrates in England and magistrates here. In the former, for the most part, magistrates are gentlemen of leizure and of education. In this country there is less leizure and less education among magistrates than in England. But even in England it is now proposed by the Lord Chancellor to cancel the commissions of amateur justices, and allow stipendiary or skilled magistrates only to act. The necessity for such a step in this country is tenfold what it is in England. The appreciation of this necessity induced our legislature, as already mentioned, in 1861, to restrict the power of acting in aid of the Ashburton treaty to Judges of the Superior Courts, Judges of County Courts, Recorders, Police Magistrates, Stipendiary Magistrates, Inspectors and Superintendents of Police. While the circle is diminished, the efficiency of the treaty is really the better secured. In other words, what we lose in quantity we make up in quality.

The jurisdiction of the judges, &c., is conferred in these words, "shall have power, jurisdiction and authority, upon complaint made under oath," &c. The jurisdiction is made to depend on a complaint made under oath. That complaint, as we have already had occasion to explain, may, in the first instance, be made here. When made, the power, &c., is to issue a warrant "for the apprehension of the fugitive or person so charged," to the end "that the evidence of criminality may be heard and considered." Grave doubts are by many entertained as to the power of the magistrate under this treaty to hear evidence for the defence. The words "evidence of "*criminality*" have by some been supposed to exclude exculpatory evidence as evidence in excuse. The practice is by no means uniform either here or in the United States or in England. The more prudent course adopted, owing to the prevailing doubts on the point, has been to receive evidence for the defence. This course has at length received the sanction of the Chief Justice of our Common Pleas, though the Chief Justice of Upper Canada is apparently studiously silent on the point.

The language of the Chief Justice of Common Pleas (*In re Burley*, 1 U. C. L. J. N S. 46) is as follows:—"As to receiving evidence on behalf of prisoners, against whom charges are made as fugitive offenders, I do not see why the same course should not be pursued as in the ordinary examination of persons charged with offences committed in this Province. In Wise's Supplement to Burns' Justice, edition of 1852, it is recommended that such evidence be taken, if offered. The observations of various judges are therein referred to as recommending it, and the opinion of the present Chief Justice of England, when at the bar, in favor of that course, is given. One ground on which he based his recommendation was, that the Imperial act then in force, relative to duties of justices of the peace out of sessions, similar to our Provincial statute of Canada, cap. 102, sec. 30, directed the magistrate to take the statement on oath or affirmation of those who know the facts and circumstances of the case, and to put the same in writing. The words of our statute (24 Vic. cap. 6) are, 'to examine upon oath any person or persons touching the truth of such charge.' This language would, in my judgment, authorize the examination of the prisoner's witnesses as much as that used in the section quoted from the Consolidated Statute of Canada, chapter 102."

The preliminary investigation takes place here. The trial is to be had abroad. Our judges sit as it were ministerially in aid of the foreign tribunal, which is the proper and only one to try disputed questions of fact, or infe-