This was an application for the discharge of a prisoner under a writ of habeas corpus.

The prisoner had been committed to gaol at Goderich on the twenty-eighth day of May, 1864, upon the following warrant of commitment:

PROVINCE OF CANADA, *United Counties of Huron and Bruce.* } To all or any of the constables, or other peace officers in the said united counties of Huron and Bruce, and to the keeper of the common gaol at Goderich, in the united counties aforesaid:

Whereas, upon information of one Elliott Hunter, stating that one John Smith, of the township of Greenock, in the said united counties of Huron and Bruce, did, at the township of Kincardine, in the county of Bruce aforesaid, on the fourteenth day of May last past, attempt or endeavour to hire, retain, engage or procure the said Elliott Hunter to enlist as a soldier in the land or sea service, for, or under, or in aid of, Abraham Lincoln, President of the United States of America, and in the service of the Federal States of America, and to go to Guelph, in the county of Wellington, in this Province of Canada, and in company with some thirteen other persons, whom he alleged had enlisted for the purpose aforesaid: and whereas the said John Smith has been brought before us, two of Her Majesty's justices of the peace in and for the said counties, namely, James Watson, Esq, and Alexander M. Ross, Esq; and whereas evidence has been brought before us as to the said offence, whereof the said John Smith stands charged, and statements and evidence were heard on the part of the crown and of the said John Smith, in his presence. After hearing counsel on both sides, and the statement of the said John Smith, it was ordered that the said John Smith be committed to the common gaol of these united counties until delivered by due course of law, or until good and sufficient sureties shall be given for his appearance at the next Court of Assize to be holden for these united counties. These are therefore to command you, the said constables and peace officers, or any of you, in Her Majesty's name, forthwith to take and convey the said John Smith to the said common gaol at Goderich, in the united counties of Huron and Bruce, and there to deliver him to the keeper thereof, together with this precept: and we hereby command you, the said keeper, to receive the said John Smith into your custody in the said gaol, and him there safely keep until he shall thence be delivered by due course of law, or good and sufficient sureties be received for his appearance at the next Court of Assize as aforesaid. Given under my hand and seal this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-four, at Goderich, in the counties aforesaid.

(Signed) JAMES WATSON, J. P.
(Signed) A. M. ROSS, J. P. [L. S.]

The prisoner had been brought before Mr. Justice Morrison, on a *habeas corpus*, and remanded, and also before Mr. Justice Hagarty, and remanded. He was subsequently brought before Mr. Justice John Wilson.

R. A. Harrison, on behalf of the prisoner, then objected to the warrant on the grounds following: 1st. No positive statement of any charge, but a mere recital, which does not state whether the service was to be on land or sea, but alleges it in the alternative, which would be bad on an indictment.

2nd. No foreign power men ioned, no intention of leaving the country, only to be taken to Guelph, which is within the Province.

3rd. Does not shew that the men he is charged with having procured to enlist were British subjects.

4th. Does not allege that prisoner was not authorized by license of Her Majesty.

5th. No amount of bail fixed.

6th The attesting clause is under "my" hand and seal, *i. e.*, of one justice only, two having signed the warrant.

He referred to *In re Martin*, 10 U. C. L. J., 130; Paley on Convictions, 140-1; Ib. 193; Ib. 213, *Rex* v. *Mullinson*, 2 Burr 679; *Dawson* v. *Fraser*, 7 U. C. Q. B., 391, 1 Hales, P. C., 583.

S. Richards, Q.C., shewed cause, referring to 59 Geo. III., c. 69.

JOHN WILSON, J.—The prisoner has been committed under the 59 Geo. III. cap. 69, sect. 6, which has been held to be in force in this Province in *Regina* v. *Schram*,* which *inter alia* enacts that if any person whatever, in any part of His Majesty's Dominions or colony subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter, or engage to enlist, or to serve, or be employed in any warlike or military operation by land or sea, as a soldier, sailor, or marine, in land or sea service, for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province, or people, any person or persons exercising, or assuming to exercise any powers of government, or to go, or agree to go, or embark from any part of His Majesty's dominions, for the purpose, or with the intent to be so enlisted, engaged, or employed as aforesaid, shall be guilty of a misdemeanor.

In the argument I am referred to what would be a legal charge of crime in an indictment, but considering recent legislation in this Province with regard to the form in which parties may be charged on indictments, I think I am bound to look more to the substance of what is charged than to the strict words by which the charge itself is made. This becomes the more necessary in this Province, for in its rapid settlement and growth we find kinds of crime and classes of criminals not naturally of its own production. We must have magistrates throughout the country, many of whom have, as yet, been of necessity taken from the uncultivated classes; but such as we have are quite able to perform their duties fairly and creditably. If judges were obliged to construe their proceedings with the strictness of special pleadings, few indeed would stand the test, and in many cases we should be obliged to discharge in a summary way and without trial men gravely charged with flagrant crimes. Speaking for myself only, I cannot say I can bring myself to look with favour on applications made on strictly technical grounds, where there is something substantial behind them.

The *habeas corpus* act, 31 Car. II. cap. 2, under which this prisoner has been brought up, and the writ of *habeas corpus* itself had not their origin in the desire to prevent those accused of crime from being detained for trial, but to prevent the crown from oppressing those obnoxious to it, or detaining them in prison on illegal charges or for an unreasonable time, without trial.

In dealing with this matter, I shall feel that I have accorded his due to the prisoner if I remand him, having first found him properly charged in contravention to this statute, 59 Geo. III. c. 69.

First, then, I find that in the warrant this prisoner stands charged with the offence that he did attempt or endeavour to hire, retain, engage or procure Elliott Hunter to enlist as a soldier in the land or sea service, for, or under, or in aid of, Abraham Lincoln, President of the United States of America.

Secondly, I find a foreign power mentioned whose existence I am bound judicially to notice, namely, the President of the United States of America, for, or under, or in whose aid Hunter was attempted to be enlisted. I reject the words Federal States as surplusage.

Thirdly, it is not necessary to allege that Hunter was a British subject. The law presumes he is until the contrary appears.

Fourthly, the statute justifies the person enlisting, if he has Her Majesty's license, but makes every person everywhere in Her Majesty's dominions guilty who acts contrary to the statute in regard to what is charged against the prisoner. The license mentioned in the statute is a license to enlist for the indemnity of him who enlists.

Fifthly, the warrant would have been good if the words "or until good and sufficient sureties shall be given for his appearance at the next assizes to be holden for these counties" had been omitted. It may be read as surplusage or read as good, for the magistrates having committed him for want of bail, it would be in the discretion of the magistrates or court ordering bail to fix the amount. It was not unreasonable to insert this clause, as shewing on its face that the justices had not refused or were unwilling to bail the prisoner. The amount of bail to be taken was not for them to specify.

Sixthly and lastly, the word "I" may be read "I and I" sign and seal this, if two do it. A note signed by two beginning with "I promise" is the promise of each of them. But the body of the warrant shews that the two were acting. There appears but one seal on face of the warrant, but it may have been sealed by both, and I shall presume that both used the same seal.

For these reasons I deny the application and remand the prisoner. Order accordingly.

* C. P., E. T., 1864, not yet reported.—EDS. L. J.