question of extradition or discharge is therefore vested exclusively in the Governor General, whose decision may possibly be influenced by considerations which a court could not entertain; and, as appears to me, all that the committing magistrate—or the judge or court before whom the accused is brought upon *habeas corpus*—has to do, is to determine whether the evidence of criminality would, according to the laws of this Province, justify the apprehension and committal for trial of the accused, if the crime charged had been committed (or alleged to have been committed) therein.

Following this as the rule, there appears to me no doubt that there was evidence to sustain a charge of assault with intent to commit murder. But it is objected that this is not the charge laid in the first information, which, on the contrary, is in these words: that the prisoners "did feloniously shoot at Americus Whedon, with intent in so doing, him, the said Americus Whedon, feloniously, wilfully and of their malice aforethought to kill and murder." It certainly would have been the more prudent course to have followed the precise description of the offence given by the statute; but if the charge, as laid in the information, involves an assault with intent to commit murder, and the evidence sustains the charge of assault with that intent, and after the evidence taken the accused are committed on a charge following the very words of the treaty and statute, I think it would be discreditable to the administration of the law if the verbal variance between the information and the statute were allowed to prevail. That shooting at a man with intent to murder him involves an assault, cannot be denied. An assault with intent to murder may be proved in various ways, when by an act of violence it is the intention of the assailant to murder. Here, the particular mode in which it was endeavoured to execute that intent—a mode which includes an assault is expressed—it limits the charge to one particular mode of assaulting, but it is not the less a charge of assault with the felonious intent; and unless the precise words of the statute must be followed, it expresses the same charge which the statute expresses. If the words of the statute were exactly followed, the charge would be well laid; but the converse is not true, viz, that the charge is insufficiently made unless the very words are followed. I think, therefore, that the first warrant might be upheld.

As to the second warrant, there is no such difficulty, but it is objected that the facts proved are as much evidence of other felonious intent as of the intent to murder, and therefore the intent to murder is left uncertain on the evidence, and so there is not sufficient evidence of the offence of an assault with intent to murder. The question of intent is for the jury. I apprehend that if on such evidence before one of our Courts a jury found a prisoner guilty of an assault with intent to murder, it could not be denied that the evidence fully warranted the finding. If so, this objection fails.

It has also been urged, and very strongly, that the evidence shews that the intent of the parties in the first instance was to steal—not to murder: that the shooting at, with intent to murder the conductor, was no part of the original intent: that a new intention to commit a different felony—though coupled with an act to commit it—can only be fastened on those who actually shared in both the new intent and the act, and that the evidence does not establish this against the prisoners. After carefully examining the evidence, I am not prepared to say that it may not and ought not to satisfy a jury that these two prisoners and Simon Reno were all three together when the shots were fired, and that two of the prisoners, possibly each of them, shot at the conductor. They were, according to Harkin's deposition, the three who entered the express car almost directly after the shots were fired. There were others of the party at the same time on the engine, managing it. I do not perceive the bearing of the case of *Rex.* v. *Cruse* 8 C. & P. 541; 2 Mod. C. C. R. 53. It establishes that the jury must be satisfied that the prisoners must have had in their minds, at the time of the shooting, an intent to murder. I think there is evidence to go to a jury to lead to that conclusion, as I think, if the conductor had been killed, there was evidence against them all of murder.

As to the effect to be given to the evidence put in on behalf of the prisoners before the committing Magistrate, I consider, for the purposes of this case, that it was properly received. Some portion of it was given by persons on whose character and respectability the prisoners' counsel appeared to place little reliance, and there was some important evidence by way of rebuttal. But that such evidence, when offered by way of answer to a strong *prima facie* case, would have justified the Magistrate in discharging the prisoners, I cannot for a moment admit. Indeed I have not been free from doubt whether it was not the intention of the Legislature by the last Act (31 Vict) to transfer to the Governor General exclusively the consideration of all the evidence, that he may determine whether the accused should be delivered up. If there is not sufficient evidence of criminality the Magistrate ought not to commit; if there is, I think he ought, notwithstanding there is evidence sufficient, if true, to sustain an *alibi*. On *habeas corpus*, the Court or a Judge would determine upon the legal sufficiency of the commitment to hold the accused in confinement, and would further review the Magistrate's decision as to there being sufficient evidence of criminality. As at present advised, I think they would leave any other considerations presented by the evidence brought forward by the accused to the Governor. I do not venture to say there would be no exception to this course. But it is very easy to point out the danger that contrasting conflictin gevidence—considering the credibility of witnesses and similar matters—might lead to. It would for many purposes be assuming the functions of a jury, and trying the whole merits of a case upon an enquiry instituted only to ascertain if there is such evidence of criminality as would justify the apprehension and committal—not the conviction—of the accused. The treaty would be waste paper if a Magistrate, appointed to conduct only a preliminary investigation, should, after hearing sufficient evidence of criminality, take upon himself to decide that the incriminating evidence was worthless, or was displaced, because witnesses on the prisoner's behalf swore to a state of facts inconsistent with the incriminating evidence—for example, as in the present case, swearing to an *alibi*. If the Magistrate dis