

C. L. Cham.]

REG. V. RENO AND ANDERSON.

[C. L. Cham.]

county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, &c., of the county of Essex, and being signed by the police magistrate as such for the county of Essex.

5. That 28 Vic. c. 20, authorizing the Governor to appoint police magistrates relates to the administration of justice, and is within the powers of the Legislature of Ontario, and is still in force.
6. That under 31 Vic. cap. 94, the last Extradition Act, all that the committing magistrate or the court or a judge has to do is to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein, and that such decision, if in question to the prisoner, does not conclude him, as the question of extradition itself or discharge exclusively rests with the Governor-General.
7. That under the circumstances of this case, there was sufficient *prima facie* evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoners was, at the time of the shooting, to commit murder.
8. That evidence offered to a magistrate by a prisoner, on an examination of this kind, by way of answer to a strong *prima facie* case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner. And *quære*, whether it was not the intention of 31 Vic. to transfer to the Governor exclusively the consideration of all the evidence, that he might determine whether the prisoner should be delivered up. The magistrate cannot weigh conflicting evidence to try whether the prisoner is guilty of the crime charged.
9. The duty of the court or a judge on a *habeas corpus* in such cases, is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality.

[Chambers, October 4, 1868.]

A writ of *habeas corpus ad subjiciendum*, under the statute of Car. II., was issued to the gaoler of the county of Essex.

The writ was issued and tested in vacation, returnable immediately before the Chief Justice of the Court of Queen's Bench, or of the Common Pleas, or any Judge of either of those Courts, presiding in Chambers at Toronto.

To this writ the gaoler made the following return:

"I, (&c.) do hereby certify that I hold and detain the said Charles Anderson and Frank Reno, in the within writ named, under the warrant of commitment of Gilbert McMicken, Esq., police magistrate in and for the said county of Essex, and issued by him on the 14th day of September, 1868, and now annexed to the within writ, and under no other warrant or writ, and for no other cause or matter whatsoever; and I am ready to produce the bodies of the said Chas. Anderson and Frank Reno, as I am within commanded, but I am unable to convey them to the city of Toronto, as within commanded, because I have no means whereby to pay the expense of such conveyance; and having applied to the said prisoners and their counsel, they refuse to furnish me with such means; and having applied to the Treasurer of the said county of Essex, I am informed that there are no funds applicable to the said service; and therefore I most respectfully submit to this honorable Court that I am unable to obey the command of the said writ."

The writ, with this return attached to it, together with the original warrant therein mentioned, were sent by post to the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, who wrote on the back of the return, "Received and filed the 26th September, 1868," and signed his name thereto. It was then handed to the Clerk in Chambers.

After this, Mr. Justice John Wilson, sitting in Chambers, made an order, allowing all the foregoing papers to be withdrawn, and that the gaoler might make such a return as the papers in his possession warranted.

On Thursday, October 1st, the gaoler brought the two prisoners before the Chief Justice of Ontario, in Chambers at Osgoode Hall, and on his behalf the writ of *habeas corpus* was put in, with the foregoing return annexed, and another return as follows:

"I, (&c.) do certify and return to our Sovereign Lady the Queen, that before the coming to me of the said writ, that is to say, on the 14th day of September, 1868, Charles Anderson and Frank Reno, in the said writ also named, were severally committed to my custody by virtue of a certain warrant of commitment, the tenor of which is as follows:—

"PROVINCE OF ONTARIO, COUNTY OF ESSEX, to wit:

"To all or any of the constables or other peace officers in the said county, at Sandwich, in the said County of Essex, and to the keeper of the Common Gaol of the County of Essex, at Sandwich, in the said County of Essex:

"Whereas Frank Reno and Charles Anderson, late of the town of Marshfield, in the County of Scott, and State of Indiana, one of the United States of America, were this day charged before me, Police Magistrate in and for the County of Essex, amongst other Counties, appointed under and by virtue of the Act of the Parliament of Canada, 28th Victoria, ch. 20, intitled 'An Act respecting Police Magistrates,' on the oath of Lee C. Weir and others, for that they, the said Frank Reno and Charles Anderson, on the 22nd day of May, 1868, within the jurisdiction of the United States of America, to wit, at the town of Marshfield, in the County of Scott, and State of Indiana, one of the United States of America, did feloniously shoot at Americus Whedon, with intent in so doing, him the said Americus Whedon, to feloniously, wilfully, and of their malice aforethought to kill and murder, and that in consequence of the said offence, the said Frank Reno and Charles Anderson have fled from the said State of Indiana, and are now residing in the town of Windsor, in the County of Essex aforesaid. And whereas such evidence as, according to the laws of this Province, would justify the apprehension and committal for trial of the said Frank Reno and Charles Anderson, if the crime of which they are accused had been committed in this Province, has been adduced before me:

"These are, therefore, to command you, the said constables or peace officers, or any of you, to take the said Frank Reno and Charles Anderson, and them safely convey to the common gaol at Sandwich, in the County of Essex aforesaid, and there deliver them to the keeper thereof, together with this precept.

"And I do hereby command you, the said keeper of the said Common Gaol, to receive the said Frank Reno and Charles Anderson into your custody in the said Common Gaol, and there safely to keep them, until they shall be thence delivered by a warrant under the hand and seal of His Excellency the Governor-General, ordering the said Frank Reno and Charles An-