4. The charge is not within the treaty, and is condoned by a statute of limitation in the United States, which period (two years) had expired before the charge was made.

See 1 Parker, Crim. Rep. 108: *Ex parte Martin*, 4 C. L. J. N. S., 198; 29-30 Vic. cap. 45, sec 3. *M. C. Cameron*, Q. C., *contra.*

The remedy is not by habeas corpus.

It is not necessary that the charge should have been made in the United States before proceeding here: *Reg.* v. *Anderson*, 4 C. L. J. N. S., 315; *Ex parte Martin, ubi sup.* : *The Queen* v. *Gould*, 20 U. C. C. P., 154.

Fugitives from justice are not entitled to the benefit of the limitation claimed, 5 Cranch 37; 1 Wharton's Am. Law, sec. 436.

The case was argued before Mr. Justice Adam Wilson, who prepared the following judgment, which, however, was delivered by the Chief Justice of the Common Pleas during the absence of the former learned judge on circuit.

A. WILSON, J.—It was objected that no charge had been made in the United States against the prisoner for the alleged offence, and that until criminal proceedings had been taken there, none could properly, under the treaty and our statutes passed for giving effect to the same, be initiated here.

The statute of the Dominion, 31 Vic. cap. 94, (Reserved Act; see 32, 33 Vic. p. xi.) reciting the treaty, refers to "persons who being charged with the crime of murder, &c., within the jurisdiction of the high contracting parties, should seek an asylum, or should be found within the territories of the other, provided that this should only be done upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed, &c."

The *charge* may therefore be made within the jurisdiction of *either* of the high contracting parties, in case the evidence of criminality, "according to the laws of the place where the fugitive or person *so charged* should be found, would justify his apprehension and commitment for trial if the crime or offence had *been there* committed." The language of the enacting part, (sec. 1) is to the same effect.

I should have thought that the statute permitted a charge to be made here against a person who had committed an offence within the treaty in the United States of America, although no charge had been begun there against the person for that offence, and I should have thought it to be free from all doubt but for the second section of the act, which enacts, that "In every case of complaint and of a hearing on the return of the warrant of arrest, copies of the depositions upon which the original warrant was granted in the United States, certified, &c., may be received in evidence of the criminality of the person so apprehended." The Con. Stat. of Canada, ch 89, sec. 2, referred to the original warrant, not as the warrant that *was* granted, but which "*may have been granted.*"

I do not, however, consider the statute to require that no charge should be laid here, when the offence has been committed in the United States, until a warrant has been granted there.

The legal functionary is bound to act here "on complaint under oath or affirmation charging any person, &c," with one of the treaty offences. And when the person charged is brought before the judge or other person who directed the arrest, the judge or other person is to examine on oath, "any person or persons touching the truth of the charge, and upon such evidence as according to the laws of this Province, would justify the apprehension and committal for trial of the person accused, if the crime had been committed here, the judge or other person shall issue his warrant for the commitment of the person charged, to remain until surrendered or duly discharged."

The judge or other person acting may proceed upon original *vivâ voce* testimony in like manner "as if the crime had been committed in this province." He may, however, also receive copies of the depositions on which the original warrant was issued in the United States in evidence of the criminality of the accused.

This, however, is an enabling act. There is no obligation on the prosecutor to produce such depositions. And I do not conceive that the statute requires there shall be first such depositions taken, and a warrant granted thereon in the United States, to give jurisdiction to the magistrate here.

The purpose of the statute was to permit the foreign evidence to be made use of here, and not to make it obligatory in the foreign country to have issued a warrant against the offender as a basis for our authority to act.

When once the foreign officers have the person accused surrendered to them for removal from this country it must be for themselves to justify their detention of the person in their own country.

It may be that in cases of felony there the detention may be justified by any one in like manner, and to the like extent that it may be justified here without a warrant at all. But whether it can or cannot, or whether the offence is there a felony or not, can make no difference here.

Our concern must be to deal with these foreign offences in our own country in like manner as if they had been committed here: to enforce the treaty effectually and in good faith, and to leave all questions of municipal law between the foreign authorities and their prisoner to be dealt with and settled by their own system with which in that respect we have nothing whatever to do.

I am therefore of opinion, that it was not necessary that an original warrant should have been granted in the United States for the apprehension of the person accused, to enable proceedings to be effectually taken against him in this Province, for an offence within the laws of the treaty.

The second objection was, that the direct evidence of criminality was that of two accomplices, and that such evidence was not sufficient to establish the charge without proper corroborative testimony.

I do not attribute much weight to this objection. the evidence of accomplices is admissible, and jurors may when the rule of law with respect to such persons has been explained to them, find a verdict on the evidence of accomplices alone. Justices holding such preliminary investigations, may assuredly do so, when the question is whether the accused shall be put upon his trial or not; and when all such questions, as to how far his accomplices are to be credited, will be