

one of the judges of the Court of Queen's Bench who might be present in Chambers at one o'clock in the afternoon of the following day, (the 24th) praying for a writ of *Habeas Corpus* and the discharge of the prisoner.

At the time appointed this petition was submitted to me.

Mr. J. Doutré appeared for the petitioner, Mr. T. K. Ramsay for the Crown, and Mr. Pominville for the private prosecutor.

A preliminary objection, raised on the ground of insufficient notice, was overruled. Mr. Doutré then set forth his client's case in a manner so lucid, that I soon convinced myself, after perusing the statute cited in the warrant of extradition, that the warrant itself—the pretended warrant of arrest alleged to have been issued in France—*arrêt de renvoi*—and all the proceedings taken with a view to obtain the extradition of the petitioner, were unauthorized by the above cited statute, illegal, null, and void, and that the petitioner was, therefore, entitled to his discharge from imprisonment.

But as Mr. Pominville, whom I supposed to be acting as counsel for the Bank of France, wished to be heard, I adjourned the discussion of the case until the following morning. I would have issued the writ before adjourning, had the counsel for the prisoner insisted upon it. But that gentleman was no doubt lulled into a sense of false security, by the indignation displayed by the counsel for the Crown, when Mr. Doutré signified to me his apprehension that a *coup de main* was in contemplation to carry off the petitioner before his case had been decided.

On the following morning, Saturday, the 25th of this month, I ordered the issuing of a writ of *habeas corpus* to bring the petitioner before me with a view to his immediate discharge.

My determination to discharge him was founded upon the reasons following.

1st. Because it is provided by the first section of the Act of the British Parliament to give effect to a Convention between Her Majesty and the King of the French, for the apprehension of certain offenders (6 and 7 Vic., ch. 75), that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act, shall be made by an *ambassador of the Government of France, or by an accredited diplomatic agent*; whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gauthier, Consul General of France in the Provinces of British North America, who is neither an ambassador of the Government of France nor an accredited diplomatic agent of that Government, according to his own avowal upon oath.

2ndly. Because, by the 3rd section of the said statute, it is provided that no Justice of

the Peace, or any other person, shall issue his warrant for any such supposed offender until it shall have been proved to him, upon oath or affidavit, that the person applying for such warrant is the bearer of a warrant of arrest or other equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the Justice of the Peace who issued his warrant against the Petitioner, issued the same without having any such proof before him, the only document produced before him, as well as before me, in lieu of such warrant of arrest or other equivalent judicial documents, being a paper writing alleged to be a translation into English of a French document, made by some unknown and unauthorized person in the office of the counsel for the prosecutor at New York, and bearing no authenticity whatever.

3rd. Because, supposing the said document purporting to be a translation of an *acte d'accusation* or indictment, accompanied by a pretended warrant for arrest and designated as an *arrêt de renvoi*, to be authentic, it does not contain the designation of any crime comprised in the number of the various crimes, for or by reason of the alleged commission of which any fugitive can be extradited under the said statute.

4th. Because by the first section of the said act it is provided that no Justice of the Peace shall commit any person accused of any of the crimes mentioned in the said act (*to wit murder, attempt to commit murder, forgery, and fraudulent bankruptcy*) unless upon such evidence as according to the laws of that part of Her Majesty's dominions in which the supposed offender shall be found, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be accused had been there committed.

Whereas the evidence produced against the Petitioner upon the accusation of forgery brought against him before the committing magistrate, would not have justified him in apprehending or committing the Petitioner for the crime of forgery, had the acts charged against him been committed in that part of Her Majesty's dominions where the Petitioner was found, to wit, in Lower Canada.

5th. Because the said warrant for the extradition of the Petitioner, as well as the warrant for his apprehension, does not charge him with the commission of any of the crimes for which a warrant of extradition can be issued under the said statute; inasmuch as in both of the said warrants the alleged offence is