

under the Statute. When he received the Governor's Warrant, assuming he had jurisdiction to act under it, he should have taken no fresh complaint. He should have embodied nothing in the form of a complaint or charge against the prisoners but what was contained in the Warrant of the Governor; and as this was his sole authority to act, he should have confined himself strictly within its requirements, which was simply in the first instance to aid in apprehending the persons accused which he should have done by issuing his Warrant reciting the Governor's Warrant, the charge therein contained against the prisoners, the requirement imposed on him thereby, and commanding the apprehension of the persons named therein, and should not have received a new complaint or introduced new charges or new matter against the accused. The correctness of this view will, I think, be confirmed by reference to the Imperial Act 8 and 9 Victoria, Chap. 120, passed 8th August, 1845, and the forms there given.

Having so examined Isaac Willetts, the final commitment recites that upon the evidence of the said Isaac Willetts and in pursuance of the Act of Assembly, he issued his Warrant directing the apprehension of the parties to answer, not the charges in the Governor's Warrant, but the complaint of Isaac Willetts made on oath for having &c., in the words which I before mentioned, to be dealt with according to law, the said complaint having been made and taken, and this Warrant having been issued in pursuance of a Warrant under the hand and seal of the Governor &c., in which, however, I am constrained to differ from the learned Police Magistrate, the Warrant of the Governor not authorizing the taking of such complaint nor the arresting the parties to be dealt with according to law, but in the words of the Statute to be delivered up to Justice according, &c. and had an application been made to discharge the prisoners while detained under this Warrant I do not see how it could have been successfully resisted, *Russell's case* 6, Q. B. 485 being a direct authority against it in one point. That was the first decision under the French convention, Act 6 and 7 Vic., Chap. 75 which is in the same words as the American Treaty. Act we are now considering. The Warrant of the Lord Mayor there set out that the Constable do send, convey and deliver into custody the body of J. B. being charged before him &c., for that the said J. B. is accused of having committed in France the crime of fraudulent bankruptcy, and that the Warrant of Arrest issued by a competent Judge in France, and duly authenticated before me, and as also appears by the Warrant of one of Her Majesty's principal Secretaries of State requiring me to take cognizance of such crime &c., is then averred that the crime and the Warrant committed the prisoner until he should be discharged, upon oath of law, which is the exact under the commitment under the words to be dealt with according to law. But the Court held the Warrant to be

upon the ground that as the commitment was under a special Statutory authority, the terms of the commitment must be special and exactly pursue that authority, acting on and recognizing the authority; or *Masha's case*, 2 Wm. Bl. 806, where it is laid down that the true distinction is that when a man is committed for any crime, either at Common Law or created by Act of Parliament, for which he is punishable by indictment, then he is to be committed until discharged by due course of law, but when it is in pursuance of a special authority the terms of commitment must be special and exactly pursue that authority.

The commitment then proceeds to aver that the prisoners having been brought before the Justice under the Warrant, and he having proceeded to the investigation of the charges of Piracy charged against them, and upon examination of the witnesses under oath touching the offence of Piracy, and upon the evidence before him, so under oath, he did, under the Act of Parliament, require and command the said Constable to convey the prisoners to the Common Jail, and deliver each of them to the Keeper thereof upon the charge of Piracy, for that they having on the 7th day of December, &c., and then proceeds to recapitulate the particulars of the charges in the complaint made before him by Isaac Willetts, omitting the felonious, &c., murder and shooting, there to remain till delivered pursuant to the Requisition aforesaid. On referring to the examinations themselves, we find the charge on which the examination proceeded was of an offence which it alleges was done on the High Seas, about 20 miles N. N. East of Cape Cod, in the United States of America, and within the jurisdiction of the United States of America, and the Circuit Courts thereof, against the laws of the United States of America and the statutes of the United Kingdom of Great Britain and Ireland. So we see that at every stage of these proceedings the charge assumes a different phase.

In the first instance the Consul simply presents the complaint as that certain persons believed to be guilty of the crime of Piracy. The Governor's Warrant puts it as a charge of Piracy and Murder, on the High Seas, within the jurisdiction of the United States of America, on the complaint of Willetts and Henderson. The commitment before the Police Magistrate is the complaint of Willetts alone, and alleges the crimes of Piracy and Murder in the United States of America, and adds the felonious shooting and wounding of a vessel and crew, and felonious stealing of the cargo. And on the examination before the Magistrate there is the addition of the crime being within the jurisdiction of the Circuit Courts of the United States, and so being contrary to the laws of the United States, and so being contrary to the laws of the United Kingdom of Great Britain and Ireland, which would seem to me to be an attempt to reconcile, or on legal principles to account for, there is, to my mind, a still more substantial