county. It further appears that Mr. McMicken, the Police Magistrate, held then—and still holds—his commissions under the Great Seal of the Province, issued under the statute of that Province (28 Vict. chap. 20), appointing him to be a Police Magistrate, and to be and act as such Police Magistrate in all the counties and unions of Counties in Upper Canada, including the County of the City of Toronto. It must also be borne in mind that the offence charged against the prisoners does not fall within the established rule and practice that every offence against our law must be inquired of, tried and determined, within the county, &c., wherein it was committed. This offence was, as is charged as having been committed in a foreign country, and the authority to take any proceedings with respect to it is founded on the treaty of Washington (August, 1842) and on the statute of the Dominion of Canada 31 Vict. ch. 94. Under this statute and the Statute of 28 Vict., and his commissions, there can be no doubt that Mr. McMicken had authority in every county in Ontario to exercise jurisdiction over cases of this kind.

The pressure of other business (as I was the only Judge in town) compelled me to defer giving judgment until yesterday evening, when I was a little startled to hear for the first time an objection raised by the prisoner's counsel, that the Act 28 Vict. ch. 20 had expired, and with it the authority of the Police Magistrates; and as there was then no time to examine into the enactments bearing on the point, the case stood over until this morning.

I have no doubt now that there is nothing whatever in the question raised.

The statute of Canada (28 Vict. ch. 20) authorizes the Governor to appoint fit and proper persons to act as Police Magistrates within any one or more counties in Upper Canada. Section 3 defines their powers, and they clearly relate to the administration of Justice.

This statute received the Royal Assent on the 18th March, 1865, and was to continue in force for two years, and thence until the end of the next ensuing session of Parliament.

On the 29th March, 1867, the Act erecting the Dominion of Canada was passed, and it was brought into operation (by proclamation) on the 1st July following. Among the powers which this statute assigns exclusively to the respective Legislatures of the Provinces is the administration of Justice therein.

By section 65, all powers, authorities and functions, which before and at the Union were vested in or exercisable by the respective Governors or Lieutenant Governors of Upper Canada, Lower Canada or Canada, shall, so far as the same are capable of being exercised after the Union, in relation to the Government of Ontario and Quebec respectively, be vested in, or may be exercised by, the Lieutenant-Governors of Ontario and Quebec respectively, &c. See also section 66.

By section 137, the words "and from thence to the end of the then next ensuing session of the Legislature, or words to that effect, used in any temporary Act of the Province of Canada, not expired before the Union, shall be construed to extend to and apply to the next session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same, as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same, as defined by the Act."

By 31 Vict. ch. 17 the Legislature of Ontario continued this statute until the first day of January, 1869.

I have no difficulty in holding that the statute 28 Vict. relates to the administration of Justice, and is within the powers of the Legislature of Ontario; and if I were not free from doubt I could not, while not clear in an opposite conclusion, refuse to adopt the evident construction which the Legislature of this Province have put on section 137 in relation to this particular statute, by continuing it, as already stated.

I do not think the Statute of Canada, 31 Vic. ch. 83, at all affects this conclusion.

Coming to the remaining question of law arising on the facts of this case, it must be observed that the proceeding against the prisoners is founded on the Statute of Canada, 31 Vic. ch. 94. The recital of that act states the treaty of 9th August, 1842, between Her Majesty and the United States of America, providing for the mutual delivery of all persons, who, being charged with the crime of murder, or assault with intent to commit murder, or piracy (and some other offences), should seek an asylum, or should be found within either territory, "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." Under the first section, the magistrate in this case had clear authority to initiate proceedings against the prisoners, and upon their apprehension on a warrant issued by him, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as, according to the law of this Province (Ontario), would justify their apprehension and committal for trial if they had committed the crime charged therein, to issue a warrant for their commitment to the proper gaol, which in the present case is the gaol of the county of Essex.

The statute gives no authority, except to commit for the purposes specified in the act. If the evidence does not justify this step the accused must be discharged—there can be no bail required as a condition of discharge.

There is some language of Lord Tenterden in the case of *Rex* v. *Gourlay*, 7 B. & C. 669, not inapplicable to such a case. I may quote it *verbatim*: "The commitment authorized by the Act of Parliament is very peculiar. It is not a commitment for safe custody, in order that the party may afterwards be brought to trial within our jurisdiction; nor is it a commitment in execution." It is a commitment for safe custody only until the Governor, on a requisition made by the United States, shall, by his warrant, order the persons committed to be delivered to the person authorized by the United States to receive them, to be tried for the crime charged; or the Governor may order their discharge, as a copy of all the testimony taken before the committing magistrate is to be transmitted for his (the Governor's) information. This provision was not contained in the two former statutes The