council jurisdiction over the original allowances for roads within the municipality, and empowers the council to pass by-laws for preserving as well as for selling the timber and trees thereon, we must, I think, hold that after the passing of a by-law for preservation of the timber, a person who cuts the timber, as the defendants have done here, in violation of the by-law, cannot exempt himself from liability by producing a timber license issued under cap 23 of the Consolidated Statutes of Canada. It has been contended that the license is a sufficient protection to the defendants, upon the ground that, as is contended, the Municipal Act, which confers power upon the municipalities over the road allowances, does not name the Crown, and that therefore the Crown is not bound, and that a Crown license, which, it is said, these timber licenses are, must prevail over the by-law of the municipalities. But the power which is conferred by the legislature upon the municipalities is a power specially affecting the road allowances, the soil and freehold of which is in the Crown, and so the estate of the Crown is what is directly affected by the act, and therefore the Crown, in my judgment, is bound. In fact the soil and freehold of these road allowances is vested in the Crown, subject to the rights of the public therein, and subject to the rights of the municipalities to pass by-laws for the preservation or sale of the timber growing thereon. It appears to me, therefore, that whatever right the defendants may have had under the licenses produced, to cut timber growing upon the road allowances in question if there had been no by-law, that right ceased upon the by-law having passed, and the acts of the defendants, subsequently to their having notice of that by-law, cannot be justified under a license then in existence, although issued previously to the passing of the by-law. In *The Corporation of Burleigh* v. *Campbell* (18 C. P. 457) it was not contended, neither was it in this case before us, that the licenses produced did not give any authority to the licensees to cut the timber growing upon road allowances. It was assumed that they did, because the soil and freehold of the road allowances are vested in the Crown, and because they were not excepted in the licenses; but, I confess, it appears to me doubtful that these licenses confer any authority whatever to cut timber growing on road allowances, although there is no exception of them in the licenses. These licenses had no effect whatever, except such as is given to them by the Statute cap. 23 of C. S. U. C. They do not operate as grants from the Crown, in right of the Crown being seised of the soil and freehold: they are issued by an officer named in the statute, and have no operation whatever, except such as is conferred by the statute. Now the statute provides that the Commissioner of Crown Lands, or any officer or agent under him authorised, may grant licenses to cut timber on the *ungranted lands* of the Crown; and the statute further enacts that these licenses *shall confer*, for the time being, on the nominee, the right to take and keep exclusive possession of the lands so described.

Now, can lands which the Municipal Institutions Act declares *shall be deemed common and public highways*, be lands which come under the designation of "the ungranted lands of the Crown," in cap. 23 of C. S. U. C., although the soil and freehold be in the Crown? It appears to me that the lands over which the Commissioner of Crown Lands is given power to grant licenses, are those ungranted lands which it is competent and legal for the Crown to grant, and not lands which are devoted to a special public purpose, which excludes the possibility of their ever being granted by the Crown. So, in like manner, it cannot be that a licensee of a timber license, granted under the statute, can take and keep exclusive possession of *the common and public highways*. As, however, the act declares that the license shall confer on the licensee such right over *all* the lands comprised in the license, it would seem to follow that *common and public highways* cannot be comprised in the license. In this view it would be unnecessary to except them in the license. Neither does there seem to me to be anything unreasonable in holding, where a license describes a large territory, comprising within the description of its limits divers *common and public highways*, that all that the license operates upon is the ungranted Crown lands comprised within the description; that is, those lands capable of being, but not yet, granted; and so excluding from the operation of the license *all common and public highways*. The effect of our judgment in this case is that, as all the acts complained of were committed by the defendants after they had express notice of the by-law, and in defiance thereof, the verdict for the plaintiffs will stand for the whole amount.

GALT, J., concurred.

Rule discharged.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

In re RICHARD B. CALDWELL.

Extradition—Habeas Corpus—Forgery—Warrant—Evidence of accomplice.

Held: 1. It is not necessary under the Extradition Treaty and Act, that an original warrant should have been granted in the United States, for the apprehension in this country of the person accused, to enable proceedings to be effectively taken against him in this Province for an offence within the treaty.

2. The evidence of accomplices is sufficient to establish a charge for the purposes of extradition.

3. Where the crime comes within the treaty, it is immaterial whether it is, according to the laws of the United States, only a misdemeanour and not a felony.

4. A magistrate here holding an investigation for the purpose of extradition should not go beyond a bare enquiry as to the *primâ facie* criminality of the accused, and should not enquire into matters of defence which do not affect such criminality.

[Chambers, March 25, 1870—*A. Wilson, J.*]

A writ of *habeas corpus* was obtained on behalf of the prisoner, directed to the Sheriff of the County of York and others.

The return stated that the prisoner was detained under the warrant of the police magistrate of the City of Toronto, on a charge of forgery committed in the United States, against the laws of that country.

J. H. Cameron, Q. C., for the prisoner, urged the following points in favour of his discharge.

1. There was no charge made in the United States before or since this charge.

2. The charge is only on the evidence of an accomplice.

3. The offence charged is not forgery within the law of the United States.