

that the statute labour assessed against the lands of the said company, be struck out, and the assessment roll of the said township, amended accordingly. And I direct the respondents to pay the costs of this appeal.

GALT, J.—There is no question as to the jurisdiction of the learned Judge to reduce the amount of the assessed value of the lands, but the point raised on the present application is whether he had any jurisdiction to entertain the question as to the liability of the company to statute labour. It is to be observed that the dispute was not as the number of days statute labour assessed for. That is regulated by the 83rd section, and is a mere matter of computation on the assessed value of the property; but the point in dispute was the liability to perform statute labour at all, and this in my opinion is not the subject of appeal, either to the Court of Revision or from their decision. Section 60 of the Assessment Act of 1869 regulates the proceedings for the trial of complaints; sub-section 1 is as follows:—"Any person complaining of an error or omission in regard to himself, or having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the assessors in the roll, may personally, or by his agent, within fourteen days after the time fixed for the return of the roll, give notice in writing to the clerk of the municipality, that he considers himself aggrieved for any or all of the causes aforesaid." Sub-section 2 is: "If a municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the roll, the clerk shall, on his request in writing, give notice to such persons and to the assessor, of the time when the matter will be tried by the court, and the matter shall be decided in the same manner as complaints by a person assessed." These are the only sub-sections to which it is necessary to refer in considering this question, and from these it appears to me that the subject matters of complaint are confined to overcharge and undercharge as respects value, and the entry or omission of a person on the roll. These then are the only matters from a decision upon which an appeal lies to the County Judge. There can be no appeal as regards the question of statute labor as a separate and distinct complaint for the reason already given, namely, that the amount of statute labour is regulated by the assessed value of the property by section 83. I am, therefore, of opinion that the learned Judge had no jurisdiction to decide the question as to whether the company were properly entered on the assessment roll as liable for statute labour. By section 332 of the Municipal Act of 1868, authority is given to township councils to pass by-laws "For regulating the manner and the division in which statute labour or commutation money shall be performed and expended," and if such by-law is unjust or improper, steps should be taken to have it quashed. The municipal council of the township of Walsingham did by the resolution of the 21st of February, 1870, regulate the manner and the division in which statute labour as regards the land in question should be performed, and while that resolution remains in force, I do not see that either the Court of Revision or the Judge of the

County Court has any power to amend the roll by striking out the statute labour.

Let the writ issue as regards the statute labour.

Prohibition granted.

UNITED STATES REPORTS.

Before U. S. Commissioner GEORGE GORHAM, Esq.

*Reported for the Law Journal by F. W. MACDONALD, Esq.,
Barrister-at-Law.*

IN THE MATTER OF THE APPLICATION OF THE
CANADIAN GOVERNMENT FOR THE EXTRADITION
OF THOS. PRIMROSE, A FUGITIVE FROM JUSTICE.

*Extradition—Robbery—Holding accused without process—
Proceedings before U. S. Commissioner—Questions of fact
for jury—Reasonable and probable cause—Trial by foreign
courts.*

On the 1st day of April, 1870, at Westminster, Ontario, one John Smith was assaulted and robbed by Thomas Primrose and others. Primrose fled, and was, on the 9th day of August, 1870, arrested in Buffalo, and immediately thereafter brought before Judge Burrows, on a writ of *habeas corpus*, and his discharge asked for, on the ground that he was detained without legal process. He was, however, held under this writ until the 27th day of December, 1870, on evidence being adduced that an application was being made by the Canadian Government for his extradition; and on that day, a mandate for his examination having arrived from the President, the writ was discharged, and prisoner taken into the custody of the United States Marshal, on a warrant issued by United States Commissioner Gorham.

Certified copies of depositions taken in Canada were filed with the Commissioner, and evidence adduced *pro and con*.

Held by Commissioner: 1. That his duty was merely that of a committing magistrate, and that he had only to enquire whether there was probable cause to believe that the crime of robbery had been committed, and that accused committed the crime.

2. That questions of fact were the exclusive province of a jury.

3. That the fact that Primrose, if held for extradition, is to be taken away to be tried in the courts of a foreign country, ought not to influence his decision one way or the other.

4. That he had entire confidence that accused would receive a fair trial in Canada: to suppose otherwise would be unjust and discourteous.

5. That the Extradition Treaty should be construed liberally and fairly to the prisoner; and while every reasonable opportunity should be given to the foreign power seeking the benefit of the treaty, the prisoner should not be remanded for trial unless there be a *prima facie* case against him, which is not overborne by the evidence adduced on his part.

[Buffalo, U.S., Dec. 20, 28, 1870.]

The prisoner, Thomas Primrose, was charged with having, on the evening of the 1st day of April, 1870, at Westminster, county of Middlesex, Ontario, in company with others, assaulted and robbed one John Smith, and of being accessory to the murder of one John Dunn. He was arrested in Buffalo in August last; and was subsequently brought before Judge Burrows, of that city, on a writ of *habeas corpus*, and his discharge asked for, on the ground of illegal detention, no process having been issued for his arrest. But in view of an application having been made for his extradition by the Canadian Government, and evidence as to that fact being given, he was from time to time remanded to jail, to await the mandate from the President for his examination before a United States commissioner; which mandate subsequently arriving, addressed to United States Commissioner George Gorham, informations were thereupon laid before the commissioner, charging the said Thos. Primrose with the said offences of robbery and murder; and the commissioner issued his warrant, ad-