that, having been a prisoner of war, in the United States, he made his escape; he is proved to have been in this province in August, 1864; and in September of that year he was in the city of Detroit, within one of those States in an apparently civil character While there, and receiving the protection of the laws of that country, he owed, according to our law, a temporary allegiance, and might, by violating it, have been guilty of treason. He cannot, I think, be heard to say that he was not in that situation while living peaceably in Detroit for a greater or less time.

Dressed as a civilian he comes on board an American steamboat, which was engaged in private trade. If he came armed, his weapons were concealed. At his request, the vessel is stopped at a port within British territory, where three other persons come on board and join him. They, too, like himself, appear to be travellers, and were secretly armed, if they were armed. The steamboat touched, in her usual course, at another British port, where twenty or thirty more men in the dress of private citizens, and unarmed, came on board, bringing with them a chest, or trunk, in which, as subsequently appeared, there were fire-arms and hatchets.

When the vessel had proceeded some distance within the United States territory, the prisoner, aided by the parties who came on board from the British territory, seized the steamboat, and then the prisoner and one of his associates, by force and terror, took from Ashley property belonging to him and his co-proprietors of the boat. These parties also took possession of another steamer, from which they removed every person, and took her with them a short distance and cast her adrift, having, it is said, scuttled her. They did not approach Johnson's Island, where the prisoners taken from the Confederate forces were confined, and off which the United States steamer *Michigan* was said to be within some miles, how near not appearing, but turned back towards Detroit and landed on the Canada shore, keeping the property they had taken from Ashley, and removing from the boat some other property belonging to its owners. Some of the parties had declared their intention of capturing the *Michigan* and releasing the prisoners—but these are the acts done by them, while some of them made inquiries and spoke of what they would desire to do, in a manner indicating views of private pillage, other than of warlike enterprise.

But, conceding that there is evidence that the prisoner was an officer in the Confederate service, and that he had the sanction of those who employed him to endeavor to capture the *Michigan* and to release the prisoners on Johnson's Island, the manifesto put forward as a shield to protect the prisoner from personal responsibility, does not extend to what he has actually done—nay more, it absolutely prohibits a violation of neutral territory or of any rights of neutrals. The prisoner, however, according to the testimony, was a leader in an expedition embarked surreptitiously from a neutral territory—his followers, with their weapons, found him within that territory, and proceeded thence to prosecute their enterprise, whatever it was, into the territory of the United States. Thus assuming their intentions to have been what was professed, they deprived the expedition of the character of lawful hostility, and the very commencement and embarkation of their enterprise was a violation of neutral territory, and contrary to the letter and spirit of the manifesto produced.

This gives greater reason for carefully enquiring whether, looking at the whole case, the alleged belligerent enterprise was not put forward as a pretext to cloak very different designs.

Taken by themselves the acts of the prisoner himself clearly establish a *prima facie* case of robbery with violence—at least according to our law. The matter alleged to deprive the prisoner's acts of this criminal character are necessarily to be set up by way of defence to the charge, and involve the admission that the prisoner committed the acts denying their criminality. Assuming some act done within our jurisdiction, which, unexplained, would amount to robbery—if explanations were offered, and evidence to support them were given at a preliminary investigation, the accused could not be discharged—the case must be submitted to a jury. This case cannot, from its very nature, be investigated before our tribunals, for the act was committed within the jurisdiction of the United States. Whether those facts necessary to rebut the *prima facie* case, can be proved, can only be determined by the courts of that country. We are bound to assume that they will try and decide it justly.

I do not, on the whole, think the prisoner is entitled to be discharged.

I should add, that, considering the nature of the questions to be determined, I requested the learned Chief Justice of the Common Pleas, and my brothers Hagarty and John Wilson, who were all, at the moment, within reach, to sit with me and aid me with their opinions. They very kindly complied with my request, and are prepared to express their views. I am sustained by their concurrence in the conclusion at which I have arrived.

Richards, C. J.—I fail to see anything in the statute requiring that the evidence should be set out in the warrant. It says: "Upon such evidence as according to the laws of this Province would justify the apprehension and committal for trial of the person accused, if the crime of which he was so accused had been committed herein, it shall be lawful for such judge or other officers to issue his warrant for the commitment of the person so charged to the proper gaol." The warrant in effect states that the Recorder had examined certain persons on oath touching the charge of robbery, and the evidence was such as according to the laws of this Province would justify the apprehension and committal for trial of the prisoner, if the crime had been committed within this Provinc.

I see no reason why the evidence should be set out in a warrant of this kind more than in any other warrant. If the court before whom the prisoner is brought should require the evidence in order to see if there is enough to justify his committal, they may direct it to be brought before them. If enough be stated in the warrant to show that the Judge had jurisdiction to enquire into the offence, that is all that is necessary. It is not contended that in any other respect the warrant is defective, except in not setting out the evidence or showing an adjudica-