

thinking the warrant defective ; and if the prisoner be remanded exclusively on that, he should be discharged. The rule does not profess to amend the warrant, and therefore the imprisonment rests on the inherent authority of the Court alone.

This point merits full examination. We have the advantage of the decision already mentioned in the case of *ex parte* Besset, which, as I have remarked, was not adverted to by any one concerned in this matter, until after the writ on which the prisoner is now before us was issued.

The British statute 6 & 7 Vict., cap. 75 (to which I have before referred), upon a requisition from the French Sovereign, within the terms of the Convention, authorizes either of the Principal Secretaries of State, and some other high functionaries, by warrant to signify that such requisition had been made, and "thereupon it shall be lawful for any Justice of the Peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender shall be found ; to examine upon oath any person or persons touching the truth of such charges ; and upon such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such Justice of the Peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to jail, there to remain until delivered pursuant to such requisition as aforesaid."

Upon this statute Besset was committed ; and in endeavouring to sustain the commitment, counsel suggested that the Court would look into the depositions on which the warrant was granted, and if they showed a crime had been committed, would remand the prisoner. To which Justice Wightman replied, "That could only be where a crime appeared for which trial might be in this country." Lord Denman said, "The depositions are nothing to us unless under the statute." And Justice Coleridge asked, "Does the statute give any power of this kind to us?" And in giving judgment to discharge the prisoner, Lord Denman, according to the report in the "Jurist," said :—"Neither this Court, nor the jailer in whose custody the prisoner is brought before us, have any power over that individual except what is given by the recent Act of Parliament, and the warrant of commitment has been drawn up in such a manner as to deprive these parties of any power to detain him. The Court has been requested to remand the prisoner, because it is alleged he has been guilty of some crime, but the Court knows nothing of any crime except from what appears on the face of the warrant of commitment, and that is insufficient to justify the detention of the prisoner." And in 6 Q. B., his Lordship is reported to have said :—"We are asked to remand the prisoner on our own authority, as charged with such a crime, but we know nothing of the crime unless as it is brought before us by the warrant, or I should rather say we have no authority of the kind in such a case. If we could have acted in the manner suggested, the statute would have been unnecessary."

Unless there be a difference between the British Act and our own, sufficient to create a solid distinction, this case is, in my opinion, decisive ; and I perceive no difference worthy of notice, except that in the British statute Justices of the Peace and other persons having power to commit for trial persons accused for crime are empowered to take the proceedings pointed out against the supposed offender, while in our Act any Judge of any of the Superior Courts in this Province, or any Justice of the Peace within the same, may do so. It cannot, I think, be successfully contended that these words confer any new power on the Superior Courts, though they do so expressly on the individual Judges ; and, in my opinion, the general ordinary powers of the Court cannot be extended by implication to cases arising under our statute any more than the corresponding powers of the Court of Queen's Bench in England could be so extended under the British Act.

It is true it does not appear in *ex parte* Besset that the depositions were before the Court. I infer they were not, but nevertheless the language used by the Judges clearly expresses to my mind their opinion that they had no authority to look at them for the purpose of supplying any defect in the warrant.

The result is, that in my opinion the return to the writ of *habeas corpus* shows no sufficient ground for the prisoner's detention. He ought, therefore, to