at the time was asleep. They seized him, handcuffed him, threatened his life, tied his hands and legs together, and himself to a stove in the car, took the keys from his pocket and rifled the safe of its contents, and, as the train approached New York, having gagged him, they leaped from the car, taking with them, with other property, over $100,000 in United States Bonds. Browne swore that although they had dominoes partly secreting their faces, that he had an opportunity of noticing their appearance, so as to be able to describe them, and in his deposition he states their sizes, complexion, color of hair, whiskers, eyes, and voice. The numbers of the bonds and their description being known to the parties who entrusted them to the care of the company, they were described in a printed circular, which was sent to brokers and others, and some of these circulars came into the possession of a Mr. Wilson, a broker in Hamilton. On the 20th of May, the prisoner came to this broker's office, and offered to sell $500 of coupons and five United States five-twenty Bonds. Mr. Wilson, referring to the circular, noticed that the numbers of the bonds corresponded with those of the stolen bonds, and he declined to purchase, telling the prisoner why, and shewing him the circular, and, at prisoner's request, gave him one of the circulars. The prisoner then left the broker's office—his movements were watched, and he was seen to pass through various streets, and eventually go into an uninhabited house, when the person watching missed him. The same evening he was arrested under the warrant produced, which described him as "a man, name unknown." He denied having any of the bonds or coupons, or that he offered any for sale to the broker; none were found on his person—the circular which he received from the broker he had with him. Upon a search at the vacant house he was seen to enter, the Chief of Police found the bonds and coupons secreted between the siding and wall of the couch house. On the following day the Assistant Secretary of the Company arrived in Hamilton, and deposed against the prisoner, by the name of Martin, as being a person answering to the description of one of the robbers. On his examination a good deal of evidence was taken, for the purpose of establishing that bonds bearing the numbers, &c., of those found were delivered to the Express Company, and in their charge in transit on the night of the robbery.

Upon reading the return to the writ of *habeas corpus*, and the examinations, depositions, &c., returned with the *certiorari*, *M. C. Cameron*, Q.C., *Dr. McMichael* with him, moved that the prisoner be discharged.

They contended that the prisoner was entitled to his discharge on various grounds; among others, that the original information and warrant issued by the Police Magistrate, and upon which the prisoner was arrested and charged, was made against "a man, name unknown," and that as the 2nd sec. of 24 Vic. cap 6, only authorised the Police Magistrate to issue his warrant upon complaint charging any person (that is, by name) found within the limits of the Province, &c. the Police Magistrate had no jurisdiction and the proceedings were void. That certain depositions made in the United States after the arrest of the prisoner here, were not receivable in evidence before the Police Magistrate, and without these there was no evidence of a robbery committed. And further, that if these depositions were receivable, still there was no evidence of the identity of the prisoner as one of the robbers, and no evidence to shew that the property seen with the prisoner, or in his possession, was any of the property alleged to have been stolen.

The depositions to which exceptions were taken were depositions made and sworn to on the 30th of May, in New York, and upon which a warrant was issued on the 1st of June, by the Recorder of that city, against the prisoner, for robbery. The prisoner having been arrested on the 21st May, in Hamilton, and being under examination for commitment under the Treaty and our statute, upon the same charge of robbery, and during his examination these depositions were received against him by the Magistrate on the 4th June, under the provisions of the 3rd sec. of 24 Vic., cap. 6, as it was conceded that unless these depositions could be received, the prisoner was entitled to be discharged, as without them there was no evidence of the robbery.

*Harrison*, Q.C., appeared on behalf of the Express Company, and

*James Paterson* on behalf of the Minister of Justice and Attorney-General for the Dominion, and opposed the discharge.

They contended that the only question for determination was, whether there was sufficient evidence to justify the committal of the prisoner. They submitted that the depositions taken on the 30th May, were properly received by the Police Magistrate, and after receiving the evidence at length, they argued that there was evidence of identification of the prisoner, and that property alleged to have been stolen was found in his possession shortly after the robbery.

MORRISON, J.—I have carefully read all the testimony, including the depositions taken in the United States, and I am of opinion, assuming that they were all receivable on the hearing before the Police Magistrate, that he was warranted in committing the prisoner for the purpose of his extradition, and that a sufficient case was made out against the prisoner to justify his apprehension and committal for trial, if the crime of which he was accused had been committed in this Province; and the circumstances proved are so suspicious that if the robbery had taken place here the magistrate would not have been justified in discharging the accused. It is not the province of the Police Magistrate to determine the questions of fact, if he finds sufficient evidence to justify a commitment. Whether there is a probability of the prisoner being eventually convicted of the offence, after a trial, is not a question for his or for my consideration.

I shall now consider the legal objections to these proceedings.

As to the first, that the Police Magistrate had no jurisdiction, by reason of the original arrest and warrant being irregular and defective, I see nothing in the objection. Assuming that the initiatory proceedings were irregular and unjustifiable, in my judgment it is a matter of no moment and beside the present enquiry, whether the prisoner originally was arrested upon a void warrant, or without complaint or warrant, or whether, as contended, the warrant was for a charge of robbery of $20,000