

C. L. Cham.]

REG. V. RENO AND ANDERSON—DEAN V. THOMPSON.

[C. L. Cham.]

mitting Magistrate, I consider, for the purposes of this case, that it was properly received. Some portion of it was given by persons on whose character and respectability the prisoners' counsel appeared to place little reliance, and there was some important evidence by way of rebuttal. But that such evidence, when offered by way of answer to a strong *prima facie* case, would have justified the Magistrate in discharging the prisoners, I cannot for a moment admit. Indeed I have not been free from doubt whether it was not the intention of the Legislature by the last Act (31 Vict.) to transfer to the Governor General exclusively the consideration of all the evidence, that he may determine whether the accused should be delivered up. If there is not sufficient evidence of criminality the Magistrate ought not to commit; if there is, I think he ought, notwithstanding there is evidence sufficient, if true, to sustain an *alibi*. On *habeas corpus*, the Court or a Judge would determine upon the legal sufficiency of the commitment to hold the accused in confinement, and would further review the Magistrate's decision as to there being sufficient evidence of criminality. As at present advised, I think they would leave any other considerations presented by the evidence brought forward by the accused to the Governor. I do not venture to say there would be no exception to this course. But it is very easy to point out the danger that contrasting conflicting evidence—considering the credibility of witnesses and similar matters—might lead to. It would for many purposes be assuming the functions of a jury, and trying the whole merits of a case upon an enquiry instituted only to ascertain if there is such evidence of criminality as would justify the apprehension and committal—not the conviction—of the accused. The treaty would be waste paper if a Magistrate, appointed to conduct only a preliminary investigation, should, after hearing sufficient evidence of criminality, take upon himself to decide that the incriminating evidence was worthless, or was displaced, because witnesses on the prisoner's behalf swore to a state of facts inconsistent with the incriminating evidence—for example, as in the present case, swearing to an *alibi*. If the Magistrate discharges the accused because he thinks their witnesses are entitled to more credit than those for the prosecution, he goes not only beyond the letter, but also, as I think, beyond the true meaning of the Act, which only confers authority on him to enquire whether the evidence of criminality is, according to the laws in force here, sufficient to sustain the charge. If he discharges because the evidence *pro* and *con.* is equally strong, and he cannot tell which side is telling the truth, he is, in my humble judgment, equally in error, because he is assuming the functions of the tribunal to which belongs the trial of the prisoner's guilt, instead of limiting himself to the question directed by the statute.

I have heard an intimation that a contrary course has been adopted in a case in this Province—that after positive testimony had been given to establish the offence charged, a witness for the accused was admitted, who swore that he, the parties accused and the witness who swore positively against them, had confederated to get possession of the money, not by an act of

robbery with violence, but by the willing connivance of the person in charge of it, and who was the principal witness against the accused: in effect, that he was a *particeps criminis* in embezzling or stealing the money, which was not, therefore, obtained by robbery, and therefore the crime actually committed did not come within the treaty, and that this conclusion was arrived at, and the accused was discharged. The facts may not have been accurately stated to me, but, assuming such a case, I could not have brought myself to such a conclusion. I do not enquire what effect such evidence would or ought to have before a tribunal sitting to try the accused on a charge of robbery; but I repeat what has often been said, that we must assume that courts in other countries will be governed by the same general principles of justice which prevail in our courts; that they will give the proper weight to the evidence for the defence, as our courts would give, and that to them should be left—so far as the merits are concerned at least—the trial of those questions which would be tried in similar cases by our own tribunals. The object of the treaty is to subject parties, against whom a charge coming within the statute is sustained by sufficient evidence of criminality, to be put upon trial before the proper tribunal. It would be defeated if, on making the preliminary enquiry, the case on both sides were heard, and, in effect, so far as the execution of the treaty is concerned, were disposed of.

I decline to discharge these prisoners.

1. Because I am of opinion, that the committing magistrate had lawful authority to deal with the case.

2. Because I think there was sufficient evidence of criminality.

3. Because I think there was a sufficient warrant of commitment.

4. Because my refusal to discharge does not conclude the prisoners, for the statute confers upon a higher functionary the power to grant or to withhold the warrant for extradition.

*Order accordingly.*

DEAN V. THOMPSON.

*Time for taking next step after disposal of summons.*

1. When a summons for leave to plead several matters has been disposed of after the time for pleading has expired, the defendant must plead instantly, otherwise the plaintiff may on the same day sign judgment for want of a plea.
2. The rule is otherwise when the summons is for security for costs, in which case the defendant has the whole of the day to plead.

[Chambers, Oct. 14, 1868.]

The defendant, on the 17th September, obtained an order for eight days further time to plead, agreeing to take short notice of trial. On the 25th September, the last day for pleading, defendant made an application for leave to plead several pleas, and on the same day he obtained a summons for security for costs, asking in it for a stay of proceedings. Both summonses were returnable on the 26th at ten o'clock. On the return of the summonses cause was shown, and shortly after ten o'clock the order for leave to plead several pleas was granted, and the application for security for costs refused. It did not appear whether the pleas were filed, but copies of those