witnesses who are produced to sustain the charge, and it is his duty to discharge the accused unless he is entirely convinced that there has been a *prima facie* case made out against him.

F. W. Macdonald, of the Ontario Bar (who was allowed to conduct the case for the claimants by the courtesy of the Commissioner and counsel for prisoner), for claimants:

The evidence of Smith is corroborated in every particular by witnesses produced on the part of the claimants, except as regards the actual commission of the offence, of which he is the only one who can give evidence. With regard to the *alibi* attempted to be proved, that was most effectually disposed of by the evidence of the conductor of the train on which Edward Primrose was brakesman; and as the evidence of the witnesses for the defence all point to the same day, it is evident that they are speaking of a day other than the first day of April, or are committing wilful perjury.

The Extradition Treaty provides that the prisoner shall be extradited on such evidence of criminality as, according to the laws of the State of New York, would justify his apprehension and committal for trial: 1st vol. Brightley's Digest, p. 270, sec. 7; 6 Opinions of Attorney-General, 207; 14 Howard's Supreme Court Rep. 193, 144; 3 Wheeler's Cr. Cases, 482.

The rule of evidence is prescribed by the Treaty: 4 Opinions of Attorney-Gen., 330, 201. If, after the examination of complainant and witnesses on both sides, it appears that an offence has been committed, and that there is probable cause to believe the accused guilty, the commissioner must commit for trial: Rev. Stat. N. Y., p. 709, sec. 25; Barbours's Cr. Law, 567.

The true enquiry is, whether the whole evidence has furnished reasonable and probable cause for believing that prisoner is guilty of the alleged crime or offence. If it does, he should be committed: 1st vol. Arch. Cr. Pleadings, 45, note. When the commissioner or magistrate is convinced that the facts as proved do not furnish probable cause for believing prisoner guilty, he ought to discharge him; but, on a question of facts entirely, if he should have a reasonable doubt, he ought to commit prisoner for trial, as it is the province of a jury to decide questions of fact. But if not entirely satisfied that prisoner is guilty, yet if the circumstances proved are positively suspicious, and such as to render his guilt probable, and the crime be an indictable offence, he should commit: Swan's Justice, 482; 1 Burr's Trials, 11, 15; 4 Dallas, 112. That degree of evidence is not required which would be necessary for the conviction of the party. The commissioner must ascertain whether there is reasonable ground to believe that the party accused may have committed the crime: Barbour's Cr. Law, 565.

It must be proved, 1st, that an offence has been committed; 2nd, that it is within the Treaty; 3rd, that there is reasonable and probable cause to believe prisoner guilty.

1st. The offence charged is robbery. As to its commission, we have the depositions taken at London before the police magistrate there, properly certified, &c., which are in themselves evidence of the fact that a crime has been committed, and that the accused is the person who committed the same: 1 vol. Brightley's Digest, 270; 2 Ib. 134. There is also the evidence adduced on the part of the claimants, which is positive.

2nd. The crime charged is robbery, and is within the Extradition Treaty.

3rd. The evidence, as a whole, furnishes reasonable and probable cause sufficient to warrant the committal of the accused for trial. Before the commissioner can come to the conclusion to discharge the prisoner, he must be satisfied that the case made out by the claimants is so entirely displaced by the evidence on the part of the defence, that there can be no doubt of the innocence of the accused.

The defence set up is purely an *alibi*, which must be strictly proved in the face of the evidence on the part of the prosecution, and must be so overwhelming in all its parts as at once to carry conviction with it. Is it so in this case?—or rather, is not the *alibi* so completely met as to fall to the ground? There is an evident attempt to get in false testimony to sustain the theory of the defence. If proved false in part, does not suspicion attach to the rest?

There is no process to compel the attendance of witnesses, and it is a difficult matter to induce parties to attend in a foreign country to give evidence, the natural inclination of parties being to refrain from giving evidence against neighbours. The claimants have experienced this difficulty in this matter.

It is ridiculous to suppose that Smith should endeavour to throw suspicion on prisoner, and at the same time state that so many persons were at Lively's, any one of whom could disprove his allegations if untrue.

No evidence of good character was adduced on the part of the defence.

As to conflicting evidence, &c., see *In re Bennet G. Burley*, 1 U. C. L. J., N. S., 46, 48, 49, 50; *Ex parte Martin*, 4 U. C. L. J., N. S., 198; *Regina* v. *Reno & Anderson*, Ib. 315, 321.

When the court enters upon the consideration of evidence for defence, a trial of fact has begun, and it is the peculiar province of a jury to determine questions of fact. If the prosecution make out a good *prima facie* case, and evidence on the defence throws doubt upon it, it is the province of a jury to pass upon it.

It is certainly due to the citizens of the United States that they should be protected against murderers, and those who attempt to commit murder, and against pirates, robbers, &c., and that these men should be extradited on the demand of a foreign government, where the crime was committed, and there punished.

George Gorham, U. S. Com.—The prisoner's extradition was asked for upon two charges, one of murder and the other of robbery, both at Westminster, Province of Ontario, and Dominion of Canada. The person murdered is said to have been John Dunn, and the robbery was from the person of John Smith, and both deeds are alleged to have been done on April 1st, 1870.

Aside from the complaint made before the Canadian magistrate, and the warrants issued thereon against this prisoner, there is no evidence to warrant me in holding Thomas Primrose upon the charge of murder; and as that is not suffi-