The Legal News.

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An *Extra* of the *Quebec Official Gazette*, issued on the 17th instant, contains a proclamation offering a reward of $1200 for the apprehension of Donald Morrison, whose case was referred to in our last issue. It is to be hoped that no part of this reward will have to be paid to any officer through whose remissness the accused has so long been allowed to evade arrest. The policy of offering rewards for the apprehension of criminals, it can hardly be doubted, is unsound. The *Law Journal*, of London, has some remarks, in reference to the Whitechapel case, which are pertinent here: "By slightly widening the circle of his crimes, he (the murderer) has had brought to bear upon him a resource of barbarism, of late years relegated to the past. The Home Secretary, in spite of clamour, has been steadfast in maintaining the practice, inherited from his predecessors, of refusing to try to catch criminals by offering large rewards. This is a policy which has now been adopted for the whole country, and it is obvious that once broken in upon, the whole mischief of information being held back by those who are waiting for the offer of a reward is revived. Unfortunately, the understanding which has prevailed has only the sanction of the comity of the police authorities throughout the country, and it has no legal force. The City authorities, having the control of their own police, can revert to exploded expedients by dealing with crime from the commercial point of view with some show of right, but in point of law, every private person may offer a reward for information leading to the detection of crime, and would be held to his promise in a Court of law. An Act of Parliament is necessary to save the administration of the law from the periodical reversion to quack remedies to which it is exposed."

In the case of Debaun, prominent counsel represented the prosecution and the prisoner. Numerous points were raised, and fully and ably argued. The judgment of Judge Rioux, concluded in the present issue, has been carefully considered, and is worthy of being put on record.

COUR SUPÉRIEURE.

QUEBEC, 7 oct. 1888.

Coram CARON, J.

FRADETTE V. FORTIER.

Procédure—Bref d'assignation—Changement du jour fixé pour le rapport.

Le défendeur plaide, par exception à la forme, que, après l'émanation du bref, mais avant le service de l'action, le jour fixé pour l'entrée de l'action a été changé sur le bref par le protonotaire. Il prétend que le bref étant une fois sorti des mains du protonotaire, personne ne peut y faire aucun changement: pas même le protonotaire: il cite à l'appui de ses prétentions plusieurs jugements rendus dans ce sens, et il demande le renvoi de l'action.

La cour renvoie l'exception à la forme avec dépens. Si le défendeur n'est pas lié par le bref avant le service, il ne peut se plaindre des changements qu'on y a faits alors qu'il n'y était pas intéressé. Le code donne l'exception à la forme pour remédier aux défauts de l'action, mais il faut prendre l'action telle que servie, parce qu'alors elle a force de contrat entre les parties. Et le protonotaire a bien le droit, du consentement de la partie qui l'a demandé, de changer le bref avant le service de l'action.

P. Aug. Choquette, procureur du Demandeur.
Hamel & Tessier, procureurs du Défendeur.
(P. A C.)

EXTRADITION CASE.

SHERBROOKE, Oct. 4, 1888.

Before GEORGE E. RIOUX, Esq., [*a Judge under the Extradition Act.*]

In re CHARLES I. DEBAUN, accused of forgery.

Extradition—Forgery—"Accountable Receipt"—R. S., ch. 165, s. 29—Alteration—Confession, Admissibility of—Informalities—Evidence for defence.

[Concluded from p. 327.]

Here we come to a very important part of the evidence and one which, if admitted,

brings the case into full light. I speak of the confession of the accused to witness Hubbell. A great deal has been said on both sides with regard to the admissibility of this confession. The defence alleges that inducements were held out by a person in authority to the accused, and therefore his confession should be rejected. A large number of authorities are quoted to show that a confession made under the influence of a promise is not admissible. It is a well known principle of law that a confession to be admitted should be freely and voluntarily given. The confession in the present case is claimed by the defence to have been made to a person in authority and under the inducement of a promise. Now, let us see what the evidence is in regard to this point.

First, was Hubbell a person in authority? A person in authority is the prosecutor—the master or mistress of the accused, and a constable or a magistrate. Now, it is not claimed that Hubbell was a constable or a magistrate. Was he a master? On the contrary, he held in the bank a position inferior to that of the accused. It might be said, though, that he represented the board of directors who were the superiors or employers of the accused. We must not forget, however, that the accused had deserted his post—he did not consider himself any longer an employee of the bank, and he had (see Gen. Barlow's evidence) sent in his resignation before the interview. I cannot, then, consider him in the relation of a servant towards his master in this respect. Was Hubbell in the position of a prosecutor? No criminal proceedings had yet been commenced against the accused; no charge had been brought against him. Hubbell was the first to speak to the directors of the bank about this interview; his object was to straighten his books. The directors consented to his going. No directions were given by them to him about the manner he should conduct the interview; no promise of any kind emanated from them.

Let us see, however, if anything was promised by Hubbell to the accused to induce him to confess. This interview was brought about through Mr. Copeland, a friend of the accused, who knew where the accused was stopping at the time. Hubbell did not. He told Copeland, one day, that if he could see the accused it would enable him (Hubbell) to straighten his books, which he was then unable to do for want of information, and he asked Copeland if a meeting could take place between him and the accused. Copeland replied it could, but he would like to know to what end and what was to be accomplished. Mr. Hubbell said: "All I want to see him about is in reference to the matters pertaining to my position in the bank and to get my books straightened up." Copeland then remarked: "If I arrange for such a meeting, what position would the accused be put in?" The reply was that "it would be in no way detrimental to his case, but on the contrary would be a benefit; for one of the sources of annoyance in the bank at the present time was the fact that they could not get this matter straightened up, and that Mr. Hubbell was the only man that could do it, that is, by means of this interview." After some further conversation, Copeland agreed to think it over and let him know. Before separating, Hubbell, talking to Copeland, stated positively that there was nothing behind it whatever, that he merely wanted certain information from the accused to assist him in the manner before stated. Copeland then decided to arrange for the meeting if possible, and went and saw the accused. Copeland, who is a witness for the defence, relates what took place in his interview with the accused. Here are his own words: "I met Charlie (the accused), and he says, 'Well, how are things in New York?' and I said, 'Things are working first rate,' and we went up-stairs and sat down together, and he said, 'Let me know what it is?' and I said, 'There is one move afoot, and that is to have you meet Hubbell,' and he said, 'I don't want to do it;' 'and now,' says I, 'hold on, wait till I tell you something:' says I, 'Mr. Hubbell is in trouble about his books, and he wants to see you in a friendly way, and ask some questions, believing that you can help him to get his books straightened out;' he replied, 'I don't know whether I ought to do that, Ed., but,' he says, 'I will do whatever you say.' I replied, 'Charlie, I think you had better do it, because I have been told it

will be an advantage to you, as well as a help to the bank.' He replied, 'Did you get this from Mr. Hubbell, or did you get this idea from Gen. Barlow?' (meaning the counsel of the National Park Bank) and says I, 'I not only got it from the General, but,' I says, I got it positively from Mr. Hubbell, and he put the desire for the meeting *purely on the ground that I have stated in the first place, that you were old friends and that he wanted to see you in your trouble,—and in the second place, he wanted to see you to ask some questions, in order to get the accounts and books straightened up;'* and he said, 'All right, I will go with you to-morrow.' And the next day Hubbell was told by Copeland where he could see the accused, and he went at once."

Let us see now what Hubbell says in his deposition at this meeting: "I said, Charlie, I don't come here to upbraid you, or find any fault, I only come to ascertain for my own satisfaction and the officers of the bank who have given me permission to come and see you, the total amount and the manner in which it was done." And I said to him: "Do not tell me anything that you are not willing I should return to the bank and report to the officers." The accused then confessed that the amount was $95,000, that it had been done by means of fictitious drafts, and he explained the method of presenting a fictitious draft on Baltimore to the collection clerk, having it go through the books regularly, waiting a sufficient time for the draft to reach Baltimore and back again, and then obtaining a ticket from the collection clerk, charging it to the Baltimore Bank, and on that ticket obtaining the money from the paying teller; then, to make the accounts correspond, he would alter the account of the Baltimore Bank when received, to correspond with the account of the Park Bank. He said also that the next morning when the package of tickets was brought up for his examination, it would come into his possession, and on the return of the package of tickets to the cheque desk, that ticket would be missing.

From the conversation of Copeland and Hubbell with the accused, above related, it does not appear to me that any inducement was held out to him to make this confession, and if there was, it was not done by any person in authority such as the law contemplates. Let us refer to some of the authorities in this matter.

Woolrich's Crim. Law, vol. 1, p. 189, says: "It may be added that the validity of a confession is for the judge's decision, and that he will require to be satisfied that the confession flows from the inducement." At page 192 he says: "It is the presence of a person in authority which is said to operate prejudicially to the reception of this evidence. The mistress said nothing whilst her servant confessed to a third person, who was not in authority, but held out an inducement. The mistress did not dissent, and the confession was refused, because the inducement which the third person held out was considered as the inducement of the mistress. Had not the witness been present, the statement would have fallen under the rule, that a confession made to a person not in authority is receivable."

In Roscoe's Criminal Evidence, 8 edit., p. 44, we find this: "Parke, J., in delivering a carefully considered judgment of the Court of Criminal Appeals in *Rex* v. *Moore*, said that, if the inducement was not held out by a person in authority, it was clearly admissible. The question may, therefore, be considered as settled." Again, at page 46, the same author says: "Although a confession made under the influence of a promise or threat is inadmissible, there are yet many cases in which it has been held that, notwithstanding such threat or promise may have been made use of, the confession is to be received, if it has been made under such circumstances as to create a reasonable presumption that the threat or promise had no influence, or had ceased to have any influence upon the mind of the party." And again at page 49, "where a person took an oath that he would not mention what the prisoner told him (*R.* v. *Shaw*, 6 C. & P. 373), and where a witness promised that what the prisoner said should go no further, (*R.* v. *Thomas*, 7 C. & P. 345), confessions were held admissible."

Archbold's Criminal Evid. 18 ed. p. 239, says: "To exclude a confession made under the influence of a promise or threat, the

"promise or threat must be of a description "which may be presumed to have such an "effect on the mind of the defendant as to "induce him to confess; and therefore an ex-"hortation, admonition, promise or threat, "proceeding at a prior time from some one "who has no concern in the apprehension, "prosecution or examination of the prisoner, "but interferes without any authority, will "not be sufficient to render a confession in-"admissible;" and at page 240: "The only "proper question is, whether the inducement "held out to the prisoner was calculated to "make a confession an *untrue* one; if not, it "will be admissible."

The defence has cited particularly the case of Drew and that of Morton, reported in Roscoe's Crim. Evid., p. 40. In the case of Drew the prisoner was told "not to say anything to prejudice himself, as what he said would be taken down, and would be used for or against him at his trial." Coleridge, J., considered this to be an inducement to make a statement and rejected the evidence. In Morton's case the constable told prisoner "what you are charged with is a very heavy offence, and you must be very careful in making a statement to me or to anybody else that may tend to injure you, but anything that you can say in your defence we shall be very ready to hear, or to send to assist you." Coleridge, J., again rejected the confession. With regard to the decisions in these two cases, Rolfe, J., said: "With the greatest "respect for my brother Coleridge, I do not "approve of the decision in the former, or the "arguments used to support it in the latter." Parke, J., said: "I have reflected on *R.* v. *Drew* "and *R.* v. *Morton*, and I have never been able "to make out that any benefit was held out "to the prisoner by the cautions employed "in those cases." And Lord Campbell, C. J., said: "With regard to the decisions of my "brother Coleridge, with the greatest respect "for him, I disagree with his conclusions."

In this case the only inducement held out, if any, came from Copeland, who might say he had it from Hubbell, and who, he supposed, had his authority from the bank. Does not this look, at first sight, a little far-fetched? Would not the courts be stretching the law somewhat in holding that A can authorize B to make a promise to an accused, and then that B would employ C to hold it out to him? Besides, we have it positively from Hubbell that he proposed the interview himself to the directors for his own benefit, that they agreed to it and gave him permission to go, without the least mention of a promise of any kind. And is it reasonable to suppose that a man of the matured age and intelligence of the accused would, in presence of Hubbell, his inferior in the bank, after being warned at the beginning that he must not tell him anything that he does not want him to repeat to the directors, would still be influenced by his conversation with Copeland which had taken place the day before? I don't believe it possible, and I hold that the confession can be admitted.

We find further that all that the accused acknowledged to Hubbell in this confession is confirmed by facts subsequently discovered. The defalcation had taken place in the Baltimore Bank account; the exact amount was $95,000, just as he stated; his method of doing this by getting the collection clerk to enter in his books a draft on Baltimore, waiting a reasonable time, then getting a ticket from another clerk and presenting it to the teller and drawing the money, then that ticket being missing the next morning, is all confirmed by the evidence of the different employees of the bank. Next his being on the look out for the monthly statement of the Baltimore Bank, and when received, altering the figures and amounts to suit himself, is evident from the appearance of the exhibits filed, and the proof made by those acquainted with his handwriting. Woolrich, in the same volume quoted before, at page 195, says: "Can a fact be "ascertained so as to be given in evidence, "in consequence of the prisoner's confession, "although the confession itself be not admis-"sible? As a general principle the fact is "admitted in evidence, but not the acknowl-"edgment of prisoner, and the reason is "this: the ground for excluding confessions "is the apprehension that the accused may "have been induced to say that which is "false, whereas the fact discovered shows "that so much of the confesssion as imme-"diately relates to it is true."

Then even if the confession were rejected, we would still have before us the facts which it has brought forth, and those alone would, in my mind, be sufficient.

I now come to the third and last point which I have to look into. Has the defence adduced any reason or raised any objection sufficient to prevent the surrender of the accused?

The first objection urged by the defence is that there is no proof of the legal existence of the National Park Bank. I do not think it was necessary on a charge of this nature. In cases of forgery it is not required to prove the intention to defraud any particular person; it is sufficient to prove generally an intent to defraud. I believe that the existence of the bank has been proved sufficiently by the evidence of the witnesses examined. See *Reg.* v. *Langton*, 2 Q. B. D., p. 296.

The second objection of the defence is that the depositions taken in the United States are worthless, because in the jurat no place is mentioned, or that the Justice who received them acted within his jurisdiction. It is true that this does not appear in the jurat, but it does in the heading or margin. Besides, Mr. Justice Patterson, who received the depositions in New York, has annexed a certificate to them under his signature, in which he states that the witnesses were examined in New York and within his jurisdiction.

The third objection is that the certificates pasted on the depositions are unreliable, and should either be on the documents or properly attached to the same. I must say that I see nothing in this objection—certificates appear attached to each document. It is one of the most complete records I have ever seen. There is, I should say, a superabundance of authentication, and it reflects credit on whoever was the author of it.

The fourth objection is that the depositions taken in the States are now of no value since the same witnesses have been examined here in Court. Well, if this is true, the second and third objections to these same depositions are of no consequence. The depositions might now be set aside and the prosecution can rely merely on the evidence adduced here. The record got up on the other side has served its purpose in affording the means to issue on it the warrant for the arrest of the accused.

The fifth objection urged by the defence is that there is no proof that the alleged crime was committed in the State of New York. I do not exactly see the force of this objection. It is sufficient if the evidence raises a reasonable presumption that the crime was committed in the country seeking extradition. Surely it could not be pretended that it was necessary to bring a witness who saw the accused alter the document in question with his own hand. This account was sent from one bank in the States to another in New York, and when presented to the clerk in the latter bank, who had the special charge of reconciling the account, it is found to be altered. Can we not fairly presume that it was altered in the United States? Besides, we have the fact proved that this forged document was put off on the bank in New York. This is sufficient outside of any other presumptions which could be reasonably entertained with regard to the forgery itself.

The sixth objection is because the grand jury of New York having found an indictment for embezzlement against the accused, his extradition cannot now be demanded for forgery. The embezzlement was found first under the Federal laws. I do not see that this would prevent the accused being indited under the common law or State law for forgery, if such a crime has been committed. It sometimes happens that, in the investigation of a charge before a magistrate for a certain offence, if a crime of a graver nature is disclosed by the evidence, the defendant is committed for the higher crime.

In the seventh objection it is said that the Park Bank officers have shown bad faith in not causing the arrest of the accused before he left for Canada, but on the contrary trying to compromise the matter with his friends. I do not think this objection requires an answer on my part.

The two objections, eight and nine, might be answered together. It is said that the complaint alleges a forgery in April last; there is no proof that money was taken then, or that the accused intended to defraud at that time; that the last taking of money pretended to be proved was in the month of

January preceding, and from these facts it is claimed by the defence that there could not be a forgery in April; that there is no case on record where, months after the defalcation, an alteration made simply to prevent discovery of the fraud has been held to be forgery.

The cases cited above from Russell's, *Rex* v. *Moody*, *Rex* v. *Harrison*, and *Rex* v. *Smith*, appear to me to be cases in point. The treasurer of a society collects monies from the members, which he is bound to deposit in the bank; but instead of doing this he embezzles a portion of the money, and when called upon to render an account, he produces a bank book in which entries appear to have been made, but which are false; this has been held to be forgery. It is immaterial to know whether the time elapsed between the embezzlement and the forgery is one day or one year. The very essence of forgery is the making or alteration of a document with intent to defraud or deceive. "The essence of the offence is the intent to "defraud or deceive," says Taschereau. "Fraud and intent to deceive constitute the "chief ingredient of the crime," says Russell, 2 vol., p. 774. Now what difference is there if the money was obtained before the document was forged or not? A clerk in a store starts off for the bank with $1000 of his master's money to make a deposit; before he gets there he puts $900 in his own pocket and only leaves $100 at the bank, and on his return he adds another cipher to the figures made by the bank clerk. Is not he guilty of embezzlement when he appropriates the money, and of forgery when he makes the alteration? Would he be any more guilty if he had left the $900 in his master's possession, and taken them only on his return from the bank?

The *Jarrard* case is also one in point. It is reported in the 4 Ont. Reports, p. 265, and is also a case under the Extradition Act. The accused, who was a county collector in New Jersey, kept a book in which to enter the monies received as such collector. The book was the property of the county, and was left by him at the close of his term of office,—and it contained the certificates of the county auditors as to the correctness of the account. After the book had been examined by the proper auditors as to the amounts received and paid out by the prisoner and a certificate of the same made by them, the prisoner, who was a defaulter to the extent of $36,000, with intent to cover up his defalcation, altered the book by making certain false entries therein and changing the addition to correspond. *Held*, that this constituted forgery at common law, as well as under our statute. On reading the report of the case, it is evident that the forgery was long after the defalcation. The book there was also held to be the property of the county, and not that of the prisoner Jarrard. In the case now before me, the account was not the property of the accused, but that of the bank. And at page 274 of the report it is said that the entries complained of in the book were such as might have deceived anyone, and it cannot be doubted that they were intended to deceive and defraud. Were the alterations made by the accused in the Baltimore Bank account intended for anything else but to "defraud and deceive?" After having embezzled the first money, if he had neglected once to alter the figures of the account of the Baltimore Bank when received, the matter would have been detected at once, and his method of taking the bank moneys would not have lasted ten years, as he confessed it did. The alterations of each monthly account afforded him the opportunity to take money again in the following month, and from there the fraudulent intent proceeds.

The *Hall* case, another extradition case, cited in vol. 8 of the Ontario appeal reports, might also be quoted as a case where the money had been first embezzled and the forgery afterwards committed to cover up the defalcation. This case was before four judges in appeal in Ontario. The prisoner here was a clerk in the employ of the Corporation of Newark; he received payments for taxes. One day he received $562 and after having made a correct entry, he erased the figure 5 and put the figure 3 instead—making a difference of $200 in his favor. This had first been held to be forgery by the county judge and also by Judge Osler of the Chancery division. The four judges in appeal were

equally divided. The two judges in favor of the discharge of the prisoner came to that conclusion because they considered that the prisoner had merely written down his own false statement—and although false it was not forgery. It was his own figures that he altered. He did not put off an account made out by another, as the act of that other person, after he had himself altered it. Judge Patterson, p. 74, says:—"In no aspect of the "evidence does it strike me that the prisoner "can be taken to have put forward the entries "in the book as the act of any one but him-"self."

The present case is much stronger than the *Hall* case. It was the Baltimore Bank account that the accused altered and then put off as the correct account of that bank. This account purported to be the act of the Baltimore Bank, by which a pecuniary obligation had been increased, and by the alteration of which the Baltimore Bank might be bound, affected and injured in its property. This account was receivable in evidence in a Court of Justice, and was an instrument upon which a suit in law for the recovery of the money acknowledged to be due therein might be predicated.

I think I have said enough and quoted a sufficient number of cases to answer the eighth and ninth objections of the defence.

The tenth ground urged by them is that the account cannot be considered an accountable receipt. The answer to this is also in my previous remarks and the cases cited.

The defence, in claiming want of felonious intent on the part of the accused in making these alterations, have cited Bishop's Crim. Law, vol. 1, § 227, where the author says:—"There is only one criterion by which the "guilt of men is to be tested, it is whether "the mind is criminal. Criminal law relates "only to crime; and neither in philosophi-"cal speculation, nor in religious or moral "sentiment, would any people in any age al-"low that a man should be deemed guilty "unless his mind were so. It is, therefore, "a principle of our legal system, as probably "of every other, that the essence of an offence "is the wrongful intent, without which it can-"not exist. We find this doctrine laid down "not only in the adjudged cases, but in va-"rious ancient maxims; such as *actus non* "*facit reum nisi mens sit rea*, 'The act itself "'does not make a man guilty unless his in-"'tention were so.' *Actus invito factus non* "*est meus actus*, an act done by me against my "will is not my act'." This, no doubt, is a sound doctrine on general principles. But all cases cannot be decided by that rule; and the same author, at paragraph 248, says: "Thus "the law presumes that every person intends "to do what he does; and intends the "natural, necessary and even probable "consequences of his act. Of course, "the presumption of an intent to do the "act is always open to be rebutted; "but this intent being established, the "deduction, that the consequences were "also intended, is generally, not always, "conclusive....... One, for example, who "intentionally utters a forged instrument, is "conclusively presumed to intend a fraud on "the person whose name is forged." Arch-"bold's Crim. Evid. p. 220 says: "The inten-"tion is not capable of positive proof; it can "only be implied from overt acts, and every "man is supposed to intend the necessary "and reasonable consequences of his own "acts. Therefore, if it cannot be implied from "the facts and circumstances which together "with it constitute the offence, other acts of "the defendant from which it can be implied "to the satisfaction of the jury must be "proved at the trial." On page 221, Archbold again says: "There are some cases in "which the intent is inferred as a necessary "conclusion from the act alone as, if a man "knowingly utter a forged instrument as a "genuine one, the intent to defraud the "party to whom he utters it is a necessary "inference." *Rex* v. *Lyon* is a case cited by the defence to show that it is necessary that the forged instrument must be a complete one. This case is found in 2nd vol. of Leach's "Crown Law Cases." There the instrument forged was a receipt or scrip not filled with the name of the subscriber to some stock. It was held by Justice Grose that the writing was a perfect nullity, nothing more than waste paper, just as much as if the sum had been omitted. It is not a parallel case to the present one.

The account altered in this case is com-

plete in itself; it is an acknowledgment of one bank to another of what moneys had been collected by the former for the latter—the same as a pass book of a bank is an acknowledgment of the deposits entered in it.

Another question raised by the defence in the case is: What amount of evidence is required to be adduced to commit accused? It is said that the evidence must be conclusive, according to the dictum of Judge Nelson in the *Kaine* case in 1852, or at least deemed by the magistrate sufficient to sustain the charge according to the treaty. With regard to Judge Nelson's remark it might be correct under the law in the United States as it existed then, but it is not in conformity with our latest decisions nor our present statute on extradition. It is said that our statute cannot change the treaty. I quite admit that we could not change, by legislation, any essential part of the treaty, such as substituting one offence for another; or restrict its operation in any way. But our statutes can interpret and give effect to the provisions of the treaty, provided it is done in a liberal spirit and in such a manner as to extend its usefulness. The other contracting nation could not complain of our action or of our bad faith. On looking at article 10 of the treaty where it speaks of the evidence required, it says in one place, that it must be sufficient to *justify* the committal for trial, at another place that it must be deemed sufficient to *sustain* the charge. I do not see much difference between the two expressions. I think the procedure indicated by our Act is intended to carry out fairly the wording of this article of the treaty. If the pretensions of the defence were correct, both nations are wrong in admitting as evidence, depositions taken in a foreign country; there is nothing in the treaty to warrant it, and the proof should, as in ordinary cases, be made only by witnesses. In the *Rosenbaum* case, Judge Ramsay said: "Although the "evidence is not perfectly conclusive, I do "not think I could discharge the prisoner." Chief Justice Dorion in the *Worms* case, says: "Our Act requires that the evidence of cri-"minality be such as, according to the laws "of this country, would justify his apprehen-"sion and trial if the crime had been com-"mitted here; and when the authorities in "the country where the offence was com-"mitted have declared, by the issue of a "warrant for the apprehension of an offender, "that the acts complained of constitute an "extradition offence according to their law, "it only remains for the authorities here to "examine whether the same, if committed "here, would, under our law, justify the ar-"rest and trial of the accused for the same "offence."

Clarke, page 177, says: "In England when "the fugitive is apprehended, he is brought "before the magistrate, who hears the case "in the same manner as if the prisoner were "charged with an indictable offence com-"mitted in England." At p. 179, "And if such "evidence is produced as would, according to "the law of England, justify the committal for "trial if the crime had been committed in "England, the magistrate is required to com-"mit." At p. 181, "The practice in Canada is "similar to that of England." At p. 182, "In "the United States, the State department re-"quires *prima facie* evidence of the guilt of "the person accused.........If the deposi-"tions show that documents alleged to have "been forged have been produced to the de-"ponent, such documents need not be pro-"duced before the magistrate."

Then, if this is the interpretation given to this clause of the treaty by both countries, I don't see any reason to put a less liberal construction on it in the present case.

A question has also arisen in this case, raised by the prosecution with regard to the admissibility of the evidence adduced by the defence. I think there can be but one interpretation of s. s. 3, sect. 9, of our statute on extradition, viz: That the accused can only show that the offence is either a political one or that it is not an extradition crime. The investigation cannot take the features of a trial—and to allow any evidence to contradict that of the prosecution would amount to making a trial of the case; the investigating justice would then take the place of the jury. I have permitted, however, some evidence (Copeland) to be adduced on behalf of the accused which may not come, perhaps, in direct contradiction of the prosecution's evidence, but I believe as this evidence does not come under sec. 9, s. s. 3, I cannot attach any weight to it at this present state of the case.

After having heard the testimony of the witnesses in this cause, and looked into the numerous cases cited, I cannot come to any other conclusion but that the accused should be committed to our common jail, there to remain until surrendered to the United States authorities or discharged according to law.

J. Dunbar, Q.C., and *Wm. White, Q.C.*, for the prosecution.

W. B. Ives, Q.C., and *J. L. Terrill, Q.C.*, for the accused.