

caution, and we should only declare an Act of the Legislature *ultra vires* upon the strongest and most conclusive evidence, and these considerations should have the greatest weight given them in a case like this, where the Statute impugned on the one hand the liberty of the subject, and on the other the suppression of crime in this and the neighbouring colonies. It seems to me that the question now before us is only whether the prisoner is now, at the present time, held in custody under a legal warrant, not whether something illegal may hereafter be done. The contention on behalf of the prisoner is, that "The Foreign Offenders Act, 1863," under which the warrant has been issued, is invalid, as being one which the Legislature of this colony had no authority to pass. Now, on the face of the Act, I am unable to discover any reason why it should be considered as not within the authority of our Legislature to pass it; it applies only to apprehension, custody, and detention of offenders found within the colony, whose offences have been committed outside its boundaries. But it is contended that the words of section 5 of our Act contemplate that under section 5 of the Imperial Act the Governor shall issue a warrant for conveyance of the prisoner beyond the colony. It may be replied that we ought not, in considering the validity of the warrant under which the prisoner is now held, to determine what the Governor's authority hereafter to do may be. It may be that he has no authority to sign a warrant ordering the conveyance of the prisoner outside the colony, but that is a future question for him and his Advisers to determine, not for us now hypothetically to determine. We have before us now neither the Governor nor his warrant, but only the warrant of the Magistrate, and we must here presume that the Governor will not exercise powers which he has not. It seems to me that section 5 of the Imperial Act contemplates the possibility of two orders, the first for delivering the prisoner into the custody of a person who wishes to remove him to the other colony, the second ordering his removal; and the Governor may make the first order, which would be perfectly legal, and leave it to the person who has the prisoner in custody to take the risk of an action for false imprisonment on the high seas. Nor am I prepared at present to assent to the general proposition that the Colonial Legislature can give the Governor no power to deport prisoners beyond the seas. I think that question very doubtful, but I have not had time carefully to consider it, and I express no opinion upon it. For these reasons I regret that I cannot concur in the judgment of the Court.

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