

## THE ARRESTED FILLIBUSTERS.

**No Examination Yet—No Commissioner to Hear it—Action for False Imprisonment Threatened—A Dripping Time.**

The examination of Ex-Consul Fabens and Henry Boulton, Clerk of the Nicaragua Agency, two of the five alleged fillibusters arrested on Thursday last, was set down for Saturday, at 12 o'clock, before United States Commissioner Stilwell. At the hour specified the deluge was in full tide. Still the compulsory edict of the law could not be dodged in any way by the prisoners. From their cozy apartment in Eldridge-street Jail, glowing with cheerful anthracite, and home-like in the abundance of choice papers and books, they had to come forth, and through the slish and pitiless rain make their way as best they could to the Commissioner's office, in College-place. As Uncle Sam provides no carriages for the transit of prisoners, they had to make their journey on foot, Deputy-Marshal Thompson being their escort—and two more thoroughly wet, more worn, fagged, exhausted and disgusted individuals could not be encountered even in a crowd of Jersey shore wreckers. The gallant Ex-Consul, with his curling locks straightened by the rain, and his captivating Spanish mantle robbed of its graceful folds, would not pass for the Apollo he ordinarily does. Mr. Boulton, although he had prudently encased his lower extremities in boots with immensely elongated legs, had failed to bring in requisition any effective protection for the upper part of his body. The full effect of his fashionable dress was as completely lost as though he had just returned from a submarine exploration for diamonds for his elegantly embroidered shirt bosom.

Shortly after the prisoners appeared, Thomas Francis Meagher, Judge Morton, Mr. Campbell, and Mr. Blankman, their counsel, presented themselves in almost as dismally wet a trim, followed by a retinue of equally damp witnesses. Mr. McKeon, the U. S. District-Attorney, Mr. Joachimssen, his assistant, and some half dozen Deputy-Marshals followed close on the heels of the former. A few reporters and some dozen more spectators made up the rest of the gathering.

Half an hour was occupied in mysterious consultation of counsel and prisoners. Mr. McKeon and his associate representatives of the Government had similar private consultations. Mutual whisperings followed between the leading opposing counsel. Occasionally an interested party would hurry out of the room and as hurriedly reappear. At last it was discovered that Mr. Stilwell, the Commissioner before whom the examination was assigned to take place, was engaged before Judge Ingersoll, in the United States District Court, and could not attend.

The remarks now began to be audible. Mr. McKeon asked Commissioner White if he would hear the examination.

*Commissioner White*—I shall have to decline to take the case owing to the fact of my being the brother of Joseph L. White, who has already been charged as illegally engaged in aiding emigration to Nicaragua.

*Mr. McKeon*—We are anxious to have the examination entered upon at once. Mr. Stilwell is absent, and—

*Commissioner White*—It makes no difference how matters are, I cannot consent to sit as Magistrate in the case.

*Judge Morton*—The examination must be proceeded with in some way, the prisoners cannot be kept in jail. Where is Commissioner Betts?

*Mr. Joachimssen*—Commissioner Betts is out of town.

Mr. Campbell suggested that an application be made to Commissioner Morton to hear the case. After consultation, the entire party marched up stairs to Mr. Morton's office. In answer to the application Mr. Morton said he had other cases to attend to, and besides that he could not see how the case could come before him except on *habeas corpus* or an order from Court, as the warrants and commitments both took place before Commissioner Stilwell.

Another consultation followed, and it was decided to apply again to Commissioner White. The whole party again retraced their steps in single file to Commissioner White's office. The Commissioner this time stated it, if possible, more distinctly than before, that he would have nothing to do with the case. Judge Morton suggested that they would take him notwithstanding his bias, the suggestion was not heeded by the Commissioner. Mr. Blankman made the final suggestion that Commissioner White go and take Mr. Stilwell's place in the U. S. District Court. Mr. White intimated that on such a rainy day he would consider it his sacred duty to remain within doors.

Mr. McKeon declared the case adjourned till Monday (to-day) at 12 o'clock.

*Judge Morton*—Will the prisoners have to be remanded to prison.

*Mr. McKeon*—Certainly—there is no other resource.

*Judge Morton*—I shall notify the Marshal that if he sends the prisoners back to jail he does so at his peril.

*Mr. McKeon*—You can do as you please.

*Judge Morton*—There is no justice in keeping my clients in jail to wait the convenience of a Commissioner in hearing the examination.

*Mr. Meagher*—I appear for Col. Fabens; the matter is definitely settled, is it, that no examination in his case can take place to-day.

*Mr. McKeon*—It is.

*Mr. Meagher*—(turning to Judge Morton)—As the District-Attorney has taken his course, now we can take our course.

*Judge Morton*—I shall proceed to notify the Marshal that he will be liable to an action for false imprisonment, if he recommits Col. Fabens and Mr. Boulton to jail.

There was quite a sensation produced by the last remark. Judge Morton and the remaining counsel, together with prisoners, witnesses, spectators and reporters, marched to the Marshal's Office, when Judge MORTON addressed Deputy-Marshal Thompson as follows:

Mr. Thompson, in the absence of Marshal Hillyer, you are his Deputy, and any notification to you will be in law the same as made to him.

*Mr. Thompson*—Yes, Sir, undoubtedly.

*Mr. Morton*—This is our notification. Col. Fabens and Mr. Boulton, for whom we are counsel, were brought here from prison this morning to be examined before Commissioner Stilwell on a charge of violation of the Neutrality laws. We are ready to proceed, but Mr. Stilwell is absent and no other Commissioner will take the case for examination. We have now to notify you, Sir, that if you take these men back to be committed to prison, you will become liable for false imprisonment, and an action on such charge will be brought against you.

*Mr. Thompson*—(smiling pleasantly)—All correct, Sir.

After the above the counsel and prisoners withdrew from the Marshal's office into the hall. After a short conference Col. Fabens and Mr. Boulton, having been informed by their counsel that the Marshal held them under no process of law, proceeded to make their exit, in the company of their legal advisers. Deputy-Marshal Thompson promptly intercepted their departure on the steps, and told them that they were his prisoners, and must remain in his custody until released, according to law. Mr. Morton told the Deputy-Marshal that, if he insisted on retaining the prisoners in his keeping, it would be at his peril. Mr. Thompson signified his willingness and intention to assume all the responsibility of the case.

In a short time Commissioner Stilwell made his appearance, and Col. Fabens and Mr. Boulton were immediately recommitted and given in charge of Deputy-Marshal Miller. At 2½ P. M. the Deputy-Marshal, enveloped from head to foot in an India-rubber suit, took the prisoners in charge, and the three proceeded on their weary march to Eldridge-street Jail.