THE CASE OF THE PRIVATEER CUBA.

The Trial at Wilmington, N. C.—First Day's Proceedings.

Commissioner Rutherford called the court to order at half-past ten o'clock A. M.

Mr. Divine, a stenographer, was sworn in.

Mr. Davis, in behalf of the defence, entered a motion for a severance. There were twenty-four defendants in the charge. It would be impossible to keep separate the evidence against any one of them from having an undue bearing in regard to the rest.

Mr. Phelps, on behalf of the government, opposed this motion. He had never known of such a motion made before a committing magistrate. His functions were twofold—First, to see if any offence had been committed; and second, to determine from the evidence if he had cause to believe that any of the persons accused are guilty, and if so, to hold them for trial. There was no jeopardy or hazard to these gentlemen in this trial, and the severance would only entail additional labors.

Judge Person, in opposition to the motion, said that it would take two or three days to examine as to each one of these defendants. If their cases were severed this examination would consume weeks. He thought this practical difficulty should be taken into consideration, where no injustice could be done by disallowing the motion. In this case, where there was a common design and purpose, and these men were banded together, the evidence which convicts one would convict all.

Judge Meares, for defence, supported the motion. He showed that it was the usual practice in North Carolina courts. This trial, in its effects upon the defendants, is something more than a mere preliminary examination. They were charged with a serious offence. It may be something more than an inconvenience to these gentlemen to be compelled to give bond for their appearance hereafter. They were strangers here. It might cause their imprisonment. They may not be prepared to give bond. There may be some who are not citizens of the United States and owed no allegiance to this government, and its courts could not take cognizance of their cases, even if guilty of the acts charged.

Commissioner Rutherford said he could see no injustice that could result from hearing all the cases at once. He, therefore, refused to grant the motion.

Mr. Davis asked that the witnesses for the defence might be separated and sent from the court room.

Judge Person remarked that the government's witnesses had been directed to stay below.

James Gorden was introduced by the prosecution. Judge Person conducted the examination.

He said he was nineteen years of age, a seaman, born in Scotland and brought up in New York; came here in the Cuba; she was a privateer, as all had been promised a share in her captures; she had on board five 12-pounder guns and two 12-pounder howitzers, and small arms; knew the officers; did not know anything of the commission of any except Commodore Higgins. The list of officers was read over, and witness gave his impression of the rank of each.

Counsel for defence objected to his impressions, and witness was directed to confine himself to facts of his own knowledge. He identified most of the officers by name.

Witness first became acquainted with Colonel Munro, who was a lieutenant of marines on the Cuba, in August in New York; was with him in the Ryan excursion; sometime in September he met with him on Broadway and went with him and others to an ale saloon in Nassau street; was informed that there was something stirring on hand; met daily for several days in City Hall Park; charged place of rendezvous to the Battery to avoid suspicion, and then to Fulton Market, Catharine Market and other points in the city, met to receive notice as to when the expedition would start; some fifteen met together; did not remember exact date of departure from New York, and started to refresh his memory by reading from notes taken by a James Murray while at sea.

Mr. Davis objected, as it was not a contemporaneous paper. It was made subsequently and it was easy to perceive for what purpose. Counsel for the prosecution did not insist upon the reading.

Witness in resuming thought it was about the 10th of September, in the evening; went to Tenth street ferry, East river; went across to Greenpoint and went up to a cove and waited; afterwards went in squads of five on board the yacht Anne; went to South Seventh street, Williamsburg, when they were joined by Colonel Munro, with five or six men; sailed out the Narrows about two miles; went on board of the schooner Petrit; was paid thirty-five dollars, less five dollars paid by Colonel Munro in New York, as first month's wages; they sailed along Long Island shore until they came to No Man's Land; when they met a vessel by order of Colonel Munro; they went below; laid behind the island for two days; saw a steamer approaching very carefully; hoisted a signal and she steamed in about an hour; this was about the 16th of September; the steamer took on board men, ship stores, blankets and bedding and a large copper instrument, which one of the men said was for the purpose of driving hot water upon persons boarding the steamer.

Mr. Davis objected to this testimony, and the witness attempted to describe this instrument.

A lengthy discussion arose between the counsel as to competency of testimony tending to criminate defendants who were not present and not parties to the conversations overheard by witness. The question of common design and purpose was discussed at length. The Commissioner required the witness to confine himself to facts within his own knowledge. [During the remarks of Judge Meares, in commenting upon the testimony of the witness as to the distance of the steamer from shore, he said the defence expected to show that witness had wilfully perjured himself. This was received with great applause by the bystanders, mostly of the crew of the Cuba, which was immediately suppressed by the Commissioner, and the counsel for the defence asked on their own behalf that it should not be repeated.] The witness said that the hornet had no flag flying, nothing but the signal, blue-white-blue. The schooner laid alongside for two days discharging the stores, guns, arms, ammunition, &c. The witness testified that for several days the schooner and tug came and went, bringing men, stores, ammunition, money, &c.; various officers got on her from these vessels, and finally a vessel came with coal—150 tons; after the last vessel came and left the Cuban flag was raised, twenty-one guns were fired and the commission of Commodore Higgins from the Cuban government read; the name of the vessel was changed to the Cuba; this was about the 25th or 27th of September; the steamer then headed southward, and came in sight of land on 1st or 2d of October; approached near the shore and pilot came on board; the steamer was carried into the mouth of Cape Fear; I left her on the evening of 5th October and proceeded to New York; when acting with Colonel Munro I was a detective in the employ of the United States; went on board of the Cuba as a detective; was acting under orders.

At two o'clock P. M. the Commissioner adjourned the court until to-morrow, at ten o'clock.