THE CASE OF THE PRIVATEER HORNET.

Eighth Day's Proceedings—Arguments of Counsel—Conclusion of the Trial of Commodore Higgins and His Officers.

[From the Wilmington (N. C.) Journal, Oct. 30.]

The court met for the purpose of hearing arguments from counsel. The fact that the speeches would be made attracted a large number of spectators. While we shall endeavor to convey to the reader's mind some idea of the character of the arguments, we by no means attempt to give these speeches in full—and we confess in the limited space afforded us our inability to do the able counsel justice; the publication of their arguments in full would only do that. The speech of Mr. Davis was especially able and eloquent, and was highly appreciated. The arguments occupied something over four hours and a half, yet the spectators' attention scarcely flagged.

Mr. Phelps opened for the government. He spoke of our international obligations and relations and the responsibility they entail. Great stress was laid upon the international code, that which was crystallized and took form in the act of 1818, the act of 1794 being more or less temporary in its nature and provisions. The duty of the Commissioner was twofold; to examine, first, if an offence has been committed, and, second, if there is sufficient ground for the belief that the parties charged are guilty. The fact of the Hornet coming in here as a man-of-war was admitted. It is shown in testimony that when she left Philadelphia she was to all appearances a peaceable vessel—at Halifax, also, she appeared thus, so that between leaving there and her arrival here, she must have been fitted out as an armed vessel. The question is whether she was fitted out in the United States, and if any of the officers charged were knowingly concerned in fitting her out in the United States. Messrs. Munro, Cook and Dornin were evidently concerned. The intention existed when she left Philadelphia. A man who carries a vessel to be armed is manifestly as guilty as he who carries arms on board. As to the others, the question is whether they were knowingly concerned in the armament of this vessel within the limits of the United States. The territory of the United States is that whole extent, be it land or water, over which the authority of the United States extends—wherever it has dominion and jurisdiction and bears sway. A vessel of a country is a part of the territory of that country wherever she may be; this doctrine is fully laid down in the elementary books. The United States always has and always will assert and maintain its control and jurisdiction over certain waters contiguous to its coast. Whether a vessel be within two, three, six or ten miles of the shore she is within the jurisdiction of the United States. The testimony of witnesses abundantly prove that this vessel was actually within a marine league of the shore. In contradiction of Gordon's testimony, under the ruling of the court, the whole ship's company might have been brought forward. But why did they not bring them? Not one word has been heard from Commodore Higgins or Captain Esling or the other officers, with the exception of one or two, in regard to this matter. (The testimony of Gordon, Gibson, Captains Marritt and Reed were then reviewed and criticized at much length; also that of Chevers, Christian and Fowler.) This prosecution is instituted for no purposes of persecution or punishment, but to ascertain the truth and maintain the honor and dignity of the government intact. The government did not prosecute. It clamors not for punishment, but for truth.

Judge Meares led off for the defence. He stated that in almost every instance in the various decisions of the Supreme Court on the act of 1818, it had been where the ship was on trial and not the officers that the statute had been construed. He agreed with the government counsel about the propriety of the neutrality laws. The counsel might have been weak in their judgment when they introduced only sufficient testimony to rebut the testimony of Gordon, but when the Court ruled that the testimony of the defendants was admissible, the same door was open to the prosecution as to the defence. If the counsel on the other side were not satisfied with the testimony introduced, why did they not call other defendants on the stand? (Here the counsel bestowed upon the sharp New York detectives, who appeared so eager in the prosecution here, some very cutting blows.) The ship is not on trial—the ship may be guilty in law and every officer and man on her innocent; she may be condemned in a libel case if facts appear as charged and then every man on trial be positively innocent. Have any of these officers been guilty of fitting out this vessel for hostile purposes? With the government rests the affirmative, and it must make out its case; there must be proof positive on every one of the points charged. It does not appear to the court judicially that the government is at peace with Spain; the case must be made out in this respect; it is a material part that this fact shall be attested by the proper State document presented in court. Gordon's testimony does not show that the officers of this ship had armed and fitted it out or had anything to do with it. This proposition covers the case—whether or not one or more of these parties on trial were concerned in fitting out the ship. If the vessel was outside of a marine league from the shore, then nobody is guilty; if inside, it must be shown which one of the officers assisted in fitting out. As to the jurisdiction over water, this is not decided by law. (Here quoted from Kent's Commentaries regarding the doctrine of jurisdiction of a country over contiguous seas.) The general impression is against it, and the general view by authorities is that the jurisdiction of a country extends no further into the sea than cannon shot, that is, a marine league, and the Congress of the United States have recognized this limit. Judge Meares here closed his remarks by asserting again that the ship might be guilty without one of the officers or men. If others from the shore fitted out the ship they were not here to-day. The officers here were mere lookers on, and assumed no authority till the Cuban flag was raised.

Mr. Davis in opening his argument said that it was a misfortune that this cause should have been prejudged. The ship now lies in sight of this courtroom dismantled, her crew disbanded, the vessel seized and as much lost to the cause of Cuba to-day as if already condemned. Without intending to reflect upon the action of the government, he would ask, is it necessary for its honor that its action should go further, or that these honorable gentlemen here should be arraigned under a criminal prosecution? In defining the duty of the Commissioner the government counsel had laid great stress upon the question of probable cause and reasonable suspicion, but this question of probable cause does not present anything definite—the question is, does the justice of the government, upon the evidence, actually require that these men shall be bound over? Under the neutrality act of 1818, it is no offence to arm and fit out a vessel in the United States. The offence consists in the intent to commit hostilities against a nation at peace with the United States. Unless that fact is established no offence is proven. In what portion of the evidence is it shown that it was at peace with Spain or any other nation? On the first examination it was contended by government counsel that the ship was not a public ship, as Cuba's belligerent rights not being recognized by the United States it recognized no war between Spain and Cuba. Applying this to the defence the ship could not be fitted out for war against Spain, when the Court had no judicial knowledge that there was a war with Spain. The prosecution has failed to establish it in proof, and facts of history must be proven as any other questions of facts. The intent to wage war with a nation with whom we are at peace is the very life of an offence; take away that and no offence exists. As to the question of jurisdiction over the sea it has not been shown that the fitting out occurred within the jurisdiction of the United States. The jurisdiction over contiguous waters was extended to within a marine league of the shore for the protection of the revenue interest, and it is an absurdity to suppose that the territorial limits of the United States cover the great extent on water as claimed by counsel. It was assumed that the court must exclude from consideration all the testimony of Gordon, and this assumption the counsel proceeded to substantiate. Gordon was an accomplice, an accomplice who became such with the avowed purpose of betraying his comrades for money. He has exhibited himself untrustworthy and had contradicted himself and been contradicted. (A sharp and scathing review of Gordon's testimony was here made.) But the question is not whether the ship was fitted out, but whether the defendants were concerned in fitting her out. Commodore Higgins and officers, so far as the court knows, never heard of the expedition of the vessel till she arrived at Halifax. Did any of these officers fit out the vessel within the jurisdiction of the United States? They had even taken the precaution to go out of the United States to join the ship and avoid any violation of the neutrality act. [A lengthy examination and scrutiny of the testimony of the witnesses regarding the position of the vessel at Montauk Point was here made.] And whenever the justice of a government becomes linked with spies and informers then goodby to the liberty of the citizen. It was denied that the government had done it, but it was the screaming of vultures above the carcass. [And here the New York detectives who were active in the prosecution were severely commented upon, and their action in accompanying the government witnesses and attempts to corrupt the crew of the vessel stated; and in this connection a just and eloquent tribute was paid to the loyalty, devotion and faithfulness of these men to their officers.] In this prosecution there is more than the honor of the government concerned—the liberty of the citizen is at stake, that which is co-existent and wrapped up with the honor of the government, and without which no republic can exist.

Mr. Phelps, for the prosecution, closed the argument. His remarks were brief, stating that the point to be determined was not that war exists between Spain and Cuba, but that the armed vessel had been fitted out and armed for hostilities against Spain, with which the United States is at peace; and whether the intent to commit hostilities existed. If the vessel was brought within the jurisdiction of the United States, then there is no doubt of the fact that the officers were knowingly concerned in fitting her out. The question of the jurisdiction of the government at sea and the position of the vessel while arming were then argued at some length.

Without any intention to reflect upon the ability and management of Mr. Phelps, it could but be remarked that the prosecution missed the presence and able services of Judge Person, of which it was deprived by his serious indisposition.

The decision of the Commissioner has been published by telegraph in the HERALD. Seven of the officers of the Cuba were held to bail in $500 each to appear for trial before the United States District Court of North Carolina.