WARBURTON ADOLPHUS FREDERICK

Trial of the Officers and Crew of the Privateer Savannah, on the Charge of Piracy, in the United States Circuit Court for the Southern District of New York

Adolphus Warburton

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A. F. Warburton
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PRELIMINARY PROCEEDINGS

During the month of May, 1861, the schooner Savannah, of Charleston, of about fifty-three tons burden, and mounting one pivot gun, was fitted out as a privateer, in the City of Charleston; and on the second of June, under the authority of "a paper, purporting to be a letter of marque, signed by Jefferson Davis," she sailed from that port for the purpose of making captures among the commercial marine of the United States.

On the following day (Monday, June 3), after having captured the brig Joseph, laden with sugar, she was, in turn, herself

taken by the United States brig-of-war Perry, Captain Parrott, and carried to the blockading squadron, off Charleston, to the commander of which (Commodore Stringham) she was surrendered by her captors.

On the fifth of June the officers and crew of the Savannah were transferred from the Perry to the United States steam-frigate Minnesota, while the prize was taken in charge by a prize crew from the Perry and sent to New York.

The Minnesota, with the prisoners on board, proceeded, on her way to New York, to Hampton Roads, where the prisoners were transferred to the steam-cutter Harriet Lane; and thence, on board that vessel, they were conveyed to New York, at which port they arrived in the course of the month of June.

On the arrival of the Harriet Lane at New York, the prisoners were given in charge to the United States Marshal; and, on application of the District Attorney of the United States, a warrant was issued, under which the prisoners were committed for trial.

On the 16th of July following, the Grand Jury of the Federal Court, then sitting in this city, came into court and presented a true bill against the prisoners, a copy of which Indictment is as follows:—

CIRCUIT COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT.[1]

At a stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held at the City of New York, within and for the District and Circuit aforesaid, on the first Monday of April, in the year of our Lord 1861, and continued by adjournments to the 26th day of June in the year last aforesaid:

Southern District of New York, ss.:—The Jurors of the United States of America, within and for the District and Circuit aforesaid, on their oath, present:

That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard

[1] At the request of the United States District Attorney, the publishers state that the Indictment was mainly the work of Mr. John Sedgwick, of the New York bar.

Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the 3d day of June, A.D. 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, did, with force and arms, piratically, feloniously, and violently set upon, board, break, and enter a certain vessel, to wit, a brig called the Joseph, the same being then and there owned in whole or in part, by a citizen or citizens of the United States of America, whose name or names are to the Jurors aforesaid unknown, and did then and there in and on board of the said brig, the Joseph, in and upon one Thies N. Meyer, then and there being a mariner, and then and there one of the ship's company of the said brig, the Joseph, and then and there master and commander thereof, and in and upon Horace W. Bridges, Albert Nash, William H. Clanning, John J. Merritt, John Quin, and Joseph H. Golden, each then and there being a mariner and one of the ship's company of the said brig, the Joseph, piratically, feloniously, and violently make an assault, and them did then and there piratically, feloniously, and violently, put in personal fear and danger of their lives, and did then and there, the brig, the said Joseph, of the value of $3,000, and the tackle, apparel, and furniture thereof, of the value of $500, and 250 hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels, and personal property of certain persons whose names are to

the jurors aforesaid unknown, the said 250 hogsheads of sugar being then and there in and on board of the said brig, and being then and there the lading thereof, and the said brig, the tackle, apparel, and furniture thereof, and the said 250 hogsheads of sugar, being then and there in the care, custody, and possession of the said Thies N. Meyer, Horace W. Bridges, Albert Nash, William H. Clanning, John J. Merritt, John Quin, and Joseph H. Golden, from the said Thies N. Meyer, Horace W. Bridges, Albert Nash, William H. Clanning, John J. Merritt, John Quin, and Joseph H. Golden, and from their said possession, care, and custody, and in their presence and against their will, violently, piratically, and feloniously seize, rob, steal, take, and carry away against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Second Count: And the jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner;

John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the third day of June, in the year of our Lord 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, did, with force and arms, piratically, feloniously, and violently set upon, board, break, and enter a certain American vessel, to wit, a brig called the Joseph, the same then and there being owned, in part, by George H. Cables, John Cables, and Stephen Hatch, then citizens of the United State of America, and did then and there, in and on board of the said brig, the Joseph, in and upon one Thies N. Meyer, then and there being a mariner and one of the ship's company of the said brig, the Joseph, and master and commander thereof, and in and upon divers other persons, each then and there being a mariner and one of the ship's company of the said brig, the Joseph, whose names are to the jurors aforesaid unknown, piratically, feloniously, and violently make an assault, and them did then and there piratically, feloniously, and violently put in bodily fear and danger of their lives, and did then and there, the said brig, the said Joseph, of the value of three thousand dollars, and the tackle, apparel, and furniture of the same, of the value of five hundred dollars, of the goods, chattels, and personal property of George H. Cables, John Cables, and Stephen Hatch, citizens of the United States of America, and two hundred and fifty hogsheads of sugar, of the value of one

hundred dollars each hogshead, of the goods, chattels, and personal property of one Morales, whose Christian name is to the jurors aforesaid unknown, the said sugar being then and there in and on board of the said brig, the Joseph, and being then and there the lading thereof, and the said brig and the tackle, apparel, and furniture thereof, and the said two hundred and fifty hogsheads of sugar then and there being in the care, custody, and possession of the said Thies N. Meyer, and the said divers other persons, mariners, as aforesaid, and of the ship's company of the said brig, the Joseph, and whose names are to the jurors aforesaid unknown, from the said Thies N. Meyer and the said divers other persons, mariners, aforesaid, and of the ship's company of the said brig, the Joseph, whose names are, as aforesaid, to the jurors aforesaid, unknown, and from their care, custody, and possession, and in their presence and against their will, piratically, feloniously, and violently, rob, seize, steal, take and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Third Count: And the jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place,

mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the 3d day of June, A.D. 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, did, with force and arms, piratically, feloniously, and violently set upon, board, break, and enter a certain vessel, to wit: a brig called the Joseph, then and there being owned by certain persons, citizens of the United States of America, to wit: George H. Cables, John Cables, and Stephen Hatch, of Rockland, in the State of Maine, and in and upon certain divers persons whose names are to the jurors aforesaid unknown, the said last-mentioned persons each being then and there a mariner, and of the ship's company of the said brig called the Joseph, and then and there being in and on board of the said brig the Joseph, did then and there, piratically, feloniously, and violently make an assault, and them did then and there piratically, feloniously, and violently put in bodily fear, and the said brig, the Joseph, of the value of $3,000; the apparel, tackle, and furniture thereof, of the value of $500; of the goods, chattels, and personal property of the said George H. Cables, John Cables, and Stephen Hatch, and 250 hogsheads of sugar of the value of $100 each hogshead, of the goods,

chattels, and personal property of one Thies N. Meyer, from the said divers persons, mariners, as aforesaid, whose names are to the jurors aforesaid unknown, in their presence, then and there, and against their will, did then and there piratically, feloniously, and violently seize, rob, steal, take, and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Fourth Count: And the jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the third day of June, in the year of our Lord one thousand eight hundred and sixty one, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, did, with force and arms,

piratically, feloniously, and violently set upon, board, break, and enter a certain vessel then and there being, to wit, a brig called the Joseph, and in and upon one Thies N. Meyer, then and there being in and on board of the said brig, and being a mariner and master and commander of the said brig, and the said Thies N. Meyer then and there being a citizen of the United States of America, did then and there piratically, feloniously, and violently make an assault, and him, the said Thies N. Meyer, did then and there piratically, feloniously, and violently put in great bodily fear, and the said brig, the Joseph, of the value of $3,000, and the tackle, apparel, and furniture thereof, of the value of $500, and 250 hogsheads of sugar, of the value of $100 each hogshead, the same then and there being of the lading of the said brig, of the goods, chattels, and personal property of the said Thies N. Meyer, in his presence and against his will, did violently, feloniously, and piratically rob, steal, seize, take, and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Fifth Count: And the jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of Nev York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the

same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, each being a citizen of the United States of America, on the 3d day of June, in the year of our Lord 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the United States of America, and within the jurisdiction of this Court, in and upon one Thies N. Meyer, then and there being, the said Thies N. Meyer then and there being a citizen of the said United States, and he, the said Thies N. Meyer, then and there being in and on board of a certain American vessel of the United States of America, to wit, a brig called the Joseph, and the said brig then and there being on the high seas as aforesaid, did, piratically, feloniously and violently, make an assault, and him, the said Thies N. Meyer, did, piratically, feloniously and violently, then and there put in bodily fear, and the said brig, the Joseph, of the value of $3,000, the tackle, apparel and furniture of the same, of the value of $500, and 250 hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels and personal property of the said Thies N. Meyer, from the said Thies N. Meyer, and in his presence, and against his will, did, piratically, feloniously and violently, seize, rob, steal, take and carry away, against the form of the statute of the said United

States of America in such case made and provided, and against the peace of the said United States and their dignity.

Sixth Count: And the Jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late-of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the 3d day of June, in the year of our Lord 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, each then and there being a citizen of the said United States of America, did, on pretense of authority from a person, to wit, one Jefferson Davis, with force and arms, piratically, feloniously and violently set upon, board, break and enter, a certain vessel, to wit, a brig called the Joseph, the same being then and there owned, in whole or in part, by a citizen or citizens of the United States of America, whose name or names are to the Jurors aforesaid unknown, and did, on

pretense of authority from a person, to wit, one Jefferson Davis, then and there in and on board of the said brig, the Joseph, in and upon one Thies N. Meyer, then and there being a mariner, and then and there one of the ship's company of the said brig, the Joseph, and then and there master and commander thereof, and in and upon Horace W. Bridges, Albert Nash, William H. Clanning, John J. Merritt, John Quin, and Joseph H. Golden, each then and there being a mariner and one of the ship's company of the said brig, the Joseph, piratically, feloniously and violently make an assault, and them did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there piratically, feloniously and violently, put in personal fear and danger of their lives, and did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, the brig, the said Joseph, of the value of $3,000, and the tackle, apparel and furniture thereof, of the value of $500, and two hundred and fifty hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels and personal property of certain persons whose names are to the Jurors aforesaid unknown, the said two hundred and fifty hogsheads of sugar being then and there in and on board of the said brig, and being then and there the lading thereof, and the said brig, the tackle, apparel and furniture thereof and the said two hundred and fifty hogsheads of sugar, being then and there in the care, custody and possession of the said Thies N. Meyer, Horace W. Bridges, Albert Nash, William H. Clanning, John J. Merritt, John Quin and Joseph H. Golden, from the said Thies N. Meyer, Horace W. Bridges,

Albert Nash, William H. Clanning, John J. Merritt, John Quin and Joseph H. Golden, and from their said possession, care and custody, and in their presence and against their will, violently, piratically and feloniously, seize, rob, steal, take and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Seventh Count: And the Jurors aforesaid upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the third day of June, in the year of our Lord one thousand eight hundred and sixty-one, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, each then and there being a citizen of the said United States of

America, did, on pretense of authority from a person, to wit, one Jefferson Davis, with force and arms, piratically, feloniously and violently set upon, board, break and enter a certain American vessel, to wit, a brig called the Joseph, the same then and there being owned in part by George H. Cables, John Cables and Stephen Hatch, then citizens of the United States of America, and did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there in and on board of the said brig, the Joseph, in and upon one Thies N. Meyer, then and there being a mariner and one of the ship's company of the said brig, the Joseph, and master and commander thereof, and in and upon divers other persons, each then and there being a mariner, and one of the ship's company of the said brig, the Joseph, whose names are to the Jurors aforesaid unknown, piratically, feloniously and violently make an assault, and them did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously and violently, put in bodily fear and danger of their lives, and did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, the said brig, the said Joseph, of the value of $3,000, and the tackle, apparel and furniture of the same, of the value of $500, of the goods, chattels and personal property of George H. Cables, John Cables and Stephen Hatch, citizens of the United States of America, and two hundred and fifty hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels and personal property of one Morales, whose Christian name is to the Jurors aforesaid unknown, the said sugar

being then and there in and on board the said brig, the Joseph, and being then and there the lading thereof, and the said brig, and the tackle, apparel and furniture thereof, and the said two hundred and fifty hogsheads of sugar, then and there being in the care, custody and possession of the said Thies N. Meyer and the said divers other persons, mariners as aforesaid, and of the ship's company of the said brig, the Joseph, and whose names are to the Jurors aforesaid unknown, from the said Thies N. Meyer and the said divers other persons, mariners as aforesaid, and of the ship's company of the said brig, the Joseph, whose names are as aforesaid to the Jurors aforesaid unknown, and from their care, custody and possession, and in their presence and against their will, piratically, feloniously, and violently, rob, seize, steal, take and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Eighth Count: And the Jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place,

mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the 3d day of June, in the year of our Lord, 1861, upon the high seas, out of the jurisdiction of any particular State and within the admiralty and maritime jurisdiction of the said United States of America and within the jurisdiction of this Court, each then and there being a citizen of the said United States of America, did, on pretense of authority from a person, to wit, one Jefferson Davis, with force and arms, piratically, feloniously, and violently, set upon, board, break, and enter a certain vessel, to wit, a brig, called the Joseph, then and there being owned by certain persons, citizens of the United States of America, to wit, George H. Cables, John Cables, and Stephen Hatch, of Rockland, in the State of Maine, and in and upon certain divers persons whose names are to the Jurors aforesaid unknown, the said last-mentioned persons each being then and there a mariner, and of the ship's company of the said brig called the Joseph, and then and there being in and on board of the said brig, the Joseph, did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously, and violently, make an assault, and them did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously, and violently, put in bodily fear, and the said brig, the Joseph, of the value of $3,000, and the apparel, tackle, and furniture thereof, of the value of $500, of the goods, chattels, and personal property of the said

George H. Cables, John Cables, and Stephen Hatch, and 250 hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels, and personal property of one Thies N. Meyer, from the said divers persons, mariners as aforesaid, whose names are to the Jurors aforesaid unknown, in their presence, then and there, and against their will, did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously, and violently, seize, rob, steal, take and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Ninth Count: And the Jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, on the 3d day of June, in the year of our Lord 1861, upon the high seas, out of the jurisdiction of any particular State, and within

the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this Court, each then and there being a citizen of the said United States of America, did, on pretense of authority from a person, to wit, one Jefferson Davis, with force and arms, piratically, feloniously, and violently set upon, board, break, and enter a certain vessel then and there being, to wit, a brig called the Joseph, and in and upon one Thies N. Meyer, then and there being in and on board of the said brig, and being a mariner and master and commander of the said brig, and the said Thies N. Meyer then and there being a citizen of the United States of America, did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously, and violently, make an assault, and him, the said Thies N. Meyer, did, on pretense of authority from a person, to wit, one Jefferson Davis, then and there, piratically, feloniously, and violently, put in great bodily fear, and the said brig, the Joseph, of the value of $3,000, and the tackle, apparel, and furniture thereof, of the value of $500, and 250 hogsheads of sugar, of the value of $100 each hogshead, the same then and there being of the lading of the said brig, of the goods, chattels, and personal property of the said Thies N. Meyer, in his presence and against his will, did, on pretense of authority from a person, to wit, one Jefferson Davis, violently, feloniously, and piratically, rob, steal, seize, take, and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

Tenth Count: And the Jurors aforesaid, upon their oath aforesaid, do further present: That Thomas Harrison Baker, late of the City and County of New York, in the District and Circuit aforesaid, mariner; and John Harleston, late of the same place, mariner; Charles Sidney Passalaigue, late of the same place, mariner; Henry Cashman Howard, late of the same place, mariner; Joseph Cruz del Carno, late of the same place, mariner; Henry Oman, late of the same place, mariner; Patrick Daly, late of the same place, mariner; William Charles Clark, late of the same place, mariner; Albert Gallatin Ferris, late of the same place, mariner; Richard Palmer, late of the same place, mariner; John Murphy, late of the same place, mariner; Alexander Carter Coid, late of the same place, mariner; and Martin Galvin, late of the same place, mariner, each being a citizen of the United States of America, on the 3d day of June, in the year of our Lord 1861, upon the high seas, out of the jurisdiction of any particular State, and within the admiralty and maritime jurisdiction of the United States of America, and within the jurisdiction of this Court, in and upon one Thies N. Meyer, then and there being, the said Thies N. Meyer, then and there being a citizen of the said United States, and he, the said Thies N. Meyer, then and there being in and on board of a certain American vessel, of the United States of America, to wit, a brig called the Joseph, and the said brig then and there being on the high seas as aforesaid, did, on pretense of authority from a person, to wit, one Jefferson Davis, piratically, feloniously and violently, make an assault, and him, the said Thies N. Meyer, did, on

pretense of authority from a person, to wit, one Jefferson Davis, piratically, feloniously and violently, then and there put in bodily fear, and the said brig, the Joseph, of the value of $3,000, the tackle, apparel and furniture of the same, of the value of $500, and 250 hogsheads of sugar, of the value of $100 each hogshead, of the goods, chattels and personal property of the said Thies N. Meyer, from the said Thies N. Meyer, and in his presence, and against his will, did, on pretense of authority from a person, to wit, one Jefferson Davis, piratically, feloniously and violently seize, rob, steal, take and carry away, against the form of the statute of the said United States of America in such case made and provided, and against the peace of the said United States and their dignity.

And the Jurors aforesaid, on their oath aforesaid, do further present: That the Southern District of New York, in the Second Circuit, is the district and circuit in which the said Thomas Harrison Baker, John Harleston, Charles Sidney Passalaigue, Henry Cashman Howard, Joseph Cruz del Carno, Henry Oman, Patrick Daly, William Charles Clark, Albert Gallatin Ferris, Richard Palmer, John Murphy, Alexander Carter Coid, and Martin Galvin, were brought and in which they were found, and is the district and circuit where they were apprehended, and into which they were first brought, for the said offense.

E. DELAFIELD SMITH,

Attorney of the United States for the Southern District of New York.

On Wednesday, the seventeenth of July, the prisoners were

brought into Court to plead to the Indictment, when Mr. E. Delafield Smith, United States District Attorney, said:

If the Court please,—In the case of Baker and others, the prisoners now at the bar, indicted for robbery on the high seas, I move that they be arraigned. I may here remark, that I have caused the service of a notice of this motion upon all the counsel known to me as engaged in the case; and if any gentleman has not received a notification, the omission proceeds from the fact that his name has not been given to the District Attorney. I understand that Mr. Larocque is counsel for one or two of the prisoners, and that he is in the building.

Mr. Larocque here entered the Court.

The District Attorney: I would now renew my motion that the prisoners at the bar be arraigned under the indictment presented yesterday.

Mr. Larocque: If your honor please, I represent but one of the prisoners. There are other counsel, I believe, who represent them generally. I appear for Mr. Harleston (the mate), and I will now state what I have to say with respect to the motion made by the District Attorney. Mr. Daniel Lord is associated with me, and I believe he is now engaged in the adjoining Court, but will soon be here. The Court will perceive that the learned District Attorney has very properly taken a considerable period of time for the framing of this indictment. It is some weeks now since the warrant of arrest was issued, and the course which he has taken certainly deserves great commendation; for the indictment

in this case, more than any other that has ever been found in this Court, required greater care in its preparation, and it is one which will certainly present more important questions than probably any that has ever been tried in this Court. The indictment was only presented yesterday, and, as far as I am concerned, I was only informed of its presentation late yesterday afternoon. Of course, I had no opportunity to examine it. I believe it is quite a voluminous document, and contains a great many counts; and before the prisoners at the bar would be prepared to plead to the indictment, it will certainly be necessary that their counsel should examine it with care, and determine what course to take with regard to it; and then, probably, there may be some application that it will be necessary to make to the Court before the prisoners will be prepared to plead. I therefore desire a postponement for that purpose, until we can have time to examine this indictment.

The District Attorney: I doubt not it is proper that time should be given to examine this indictment, and to adopt such course with respect to it as gentlemen standing in the sacred relation of counsel may deem it their duty to take. I should be very glad, however, if that time could be, with due regard to the convenience of counsel, so near as that the pleas may be recorded and the trial set down for some day before the Court adjourns. I shall be ready, if your honor please, on behalf of the Government, to try the prisoners on any day. I shall be prepared to try them within two or three days; but, certainly, it is right that counsel should have time to examine the indictment,

as suggested. I hope only that such examination may be made speedily, as I understand your honor will adjourn the Court at an early day.

Mr. Larocque: It would be utterly impossible for this case to be tried this term. In conversation with the counsel for the Government, a few days ago, the gentleman himself declared that the case could not be tried this term of the Court, and it would be impossible, your honor, for us to be ready for trial during this term. It will be necessary for us to obtain testimony from abroad, out of the limits of this State, and that cannot be procured in time to try the case this term. Certainly, no interest of public justice can suffer by a delay of the trial of this case; and I think it is eminently proper, and I am sure the Court will agree with me, that a proceeding of this importance should be conducted with deliberation, and that ample time should be given to the prisoners to prepare their defence. I had understood, moreover, that some intimation had been made by your honor's associate on the bench (Judge Nelson) that he would attend upon the trial of this case. I am told that Judge Nelson met with an accident shortly after his return home from his attendance upon his judicial duties, by being run away with by a horse, and that he is so lame that he is unable to move at present; and I am very credibly assured that Judge Nelson has expressed his conviction that it was his duty to attend and to sit on the trial of this case. Very important questions of law will be presented, and your honor is aware that in a criminal case in this Court there is no writ of error. The

prisoner has the right to a review of any decision that might be made in this Court, in case a difference of opinion should arise between the Judges who preside. And certainly, in a case of such great importance as this is, where the lives of so many prisoners are at stake, it is of the utmost consequence that there should be a full Court present when the prisoners are tried. So far with respect to the trial of the case. Now, your honor is also aware that, by the statutes of the United States, the prisoners have a right to a certain period of time before any movement can be made with a view to trial. We certainly cannot be ready to plead to this indictment in less than a week.

The District Attorney: The Court will permit a single remark concerning the conversation to which my learned friend has alluded. I never intended to say decidedly that the trial could not take place during the present term. I did, however, at one time, express an opinion that, as the term was nearly ended, and as the summer was upon us, probably I should not succeed in bringing the case on for trial until the autumn. As, however, the indictment has been promptly found, delay till fall is, I trust, unnecessary. Events continually taking place upon the ocean seem to render it important that the trial should take place at an early day. With these suggestions, I leave the matter entirely with the Court, where, of course, it ultimately belongs.

Mr. Sullivan: May it please the Court, I appear for Captain Baker, the first prisoner named in the indictment.

Judge Shipman asked who appeared for the other prisoners.

He wished to know if all the prisoners were supplied with counsel; if not, he would assign them counsel.

Mr. Sullivan said he did not desire a week's postponement, as he understood his honor had intimated that the Court would adjourn on Wednesday. As to the time of trial, he was authorized and instructed specially to say for Captain Baker that he would ask for no delay other than what was absolutely necessary for his counsel to prepare. He (Mr. Sullivan) hoped that the Court would continue its session specially to hear the case, or at least to try some portion of the defendants. He made that remark on the presumption that the defendants would ask to be tried separately.

Mr. Mayer said he appeared for one of the seamen, Wm. C. Clark; and he concurred in Mr. Larocque's remarks.

Judge Shipman: It is hardly necessary now to discuss when the case will be set down for trial. The motion now before the Court is for the arraignment of the prisoners, and counsel asks for time to plead. I should like to know the names of the counsel who appear for the prisoners.

Mr. Larocque said he appeared, in conjunction with Mr. Lord, for Mr. Harleston.

Mr. Ridgway appeared for the sailors Carno, Oman, Daly, Palmer, Murphy, Galvin, and Coid; and he, also, concurred in the motion for time to plead.

Mr. Sandford appeared for Albert G. Ferris, and desired that the trial should be brought on as speedily as possible.

The District Attorney: I have a suggestion to make as to the

time of pleading. With regard to the indictment, when counsel come to examine it, I think they will find, that although the counts are numerous, yet, after all, the indictment is simple. I would suggest that counsel should examine the record between this and to-morrow morning, and then the prisoners could undoubtedly be arraigned without objection.

Mr. Daniel Lord: I perceive that the prisoners are brought here to plead in chains. If that is to be repeated each time they are brought here, I would wish to have the time named when they are to plead.

Mr. James T. Brady said that he believed the engagement under which he acted, in connection with some other gentlemen, covered the cases of all the accused who had not already been represented before his honor by distinct counsel.

Judge Shipman: There is no necessity, then, for the Court to assign counsel?

Mr. Brady: In response to your honor, allow me to say that I represent Captain Baker more particularly. From the very necessity of this case a number of counsel have been employed, and more, probably, than will take part, as your honor is well aware, in the trial. I have had the pleasure of conferring with Mr. Lord only once since this case arose; and as he is in every respect the senior of the gentlemen who are employed in the case, we should like an opportunity for conference. It is highly important to determine what species of plea should be put into the indictment; and while, as I remarked, all the counsel

may not take a prominent part in the argument or the trial, yet their judgments ought to be considered by each other, and some decisive course concluded upon. There certainly can be no great occasion for hurry, as these men are closely confined, and certainly are under the closest kind of restraint, from what I see around me (glancing at the prisoners, handcuffed). I don't suppose there is any apprehension, even if the prison doors were opened, that they would be likely to escape, from the state of feeling which at present exists in this city and this section of the country. We only wish for time that is necessary to determine what kind of an answer to make to this indictment; and after that we will proceed, I venture to say, with the utmost diligence, to have this case prepared for trial, or it may probably turn out that there will be no necessity for any trial. That may occur to a legal mind, or it may not.

Judge Shipman: Well, let the prisoners be remanded until Tuesday morning next.

The Court then adjourned.

On Tuesday, the twenty-third of July, the prisoners were again brought into Court, and were placed within the bar, at the south end of the room.

E. Delafield Smith, Esq., District Attorney, moved that the prisoners be arraigned.

Algernon S. Sullivan, Esq., of counsel for the prisoners, stated that all the prisoners were represented by counsel, and that they were acquainted with the charges contained in the indictment.

The prisoners were ordered to stand up; and the Clerk of the Court called T. Harrison Baker, saying: "You have been indicted for robbery on the high seas; how do you plead—guilty, or not guilty?" To which Mr. Baker replied, "Not guilty."

The District Attorney suggested that the indictment be read to the prisoners, unless each one of them expressly waived the reading. He would prefer to have it read, however.

The prisoners' counsel respectively submitted that it was of no consequence. The accused knew the contents of it.

Judge Shipman remarked that the reading of the indictment would consume some time; but the District Attorney said that questions had been raised on this point, and, to insure regularity, he desired to have the indictment read; whereupon the Court ordered the Clerk to read the instrument.

At the conclusion of the reading, the prisoners severally pleaded, each for himself, "not guilty."

District Attorney Smith: If the Court please, the facts in this case are exceedingly simple. The evidence in reference to them —as well such as is required by the prosecution, as that which we may suppose to be desired by the defendants—is within a narrow range and easily attainable. I have examined the testimony with care. There can be no doubt, upon the evidence in the case, that the prisoners are guilty, and that as a matter of law, as well as a matter of fact, they ought to be convicted. It is impossible to close our eyes to the facts relating to this case, as they bear upon what is daily taking place upon the high seas. The merchant marine

of the country is subjected to piratical seizure from day to day. Murder is the natural child of robbery, and we may daily expect to hear of bloodshed on the ocean, in attempting the execution of the purpose conceived by so many of our countrymen, to deal a death-blow to American commerce.

It seems to me, that the ends of public justice require that I should urge upon your Honor the propriety and necessity of an early trial of this issue. If, peradventure, the prisoners are innocent, it can work no injury to them; if guilty, they ought to be convicted, and in my judgment, the law ought to take its course to the end, in order that an example may be set to those who are pursuing the species of marauding, of which I think the testimony will show the prisoners to have been guilty.

I respectfully urge, that the trial be set down for Wednesday, July 31st, a week from to-morrow. I may add that I shall be happy to render to the counsel for the prisoners every facility within my power for the presentation of all the facts. The plea of authority, which we can anticipate, is set forth in the indictment, and a copy of the letter of marque has been furnished to counsel for the defence. I can see no valid reason for postponing the trial; none, certainly, in the present state of the country.

Mr. Larocque said, it seemed to him the idea might have occurred to the District Attorney, that these men had not yet been convicted. The law presumed every man to be innocent until he was proved guilty. The counsel should not presume these men to be guilty until they were tried. There were questions of

international law involved in this case which would be entitled to consideration. The counsel for the United States would learn that he had misunderstood the meaning of the statute under which these men were indicted. The prisoners' counsel were not ready. They required documentary evidence and witnesses to be procured from a distance. They could not be ready to go on at this term of the Court. He submitted that a cause of this magnitude should not be disposed of so hurriedly. What had the prisoners to do with others on the ocean? Did the counsel for the Government desire to hurry them to trial unprepared for the purpose of striking terror to those on the ocean? He could not believe it to be so.

Mr. Sullivan said the prisoners would not ask any further delay after procuring their testimony. Some of the evidence could not be obtained this side of Charleston, and it would be impossible to procure it under three or four weeks. The case involved the legal status between the United States and the seceded States. He opposed setting down the case for trial on next Wednesday.

Mr. Davega, of counsel for the prisoners, also opposed the motion, reiterating the statements in relation to the testimony to be procured.

Mr. Mayer called the attention of the District Attorney to the fifth count of the indictment, describing the prisoners as citizens of the United States. His client was a citizen of Hamburg, and he would not be ready to try the case in several weeks.

Mr. Daniel Lord, in behalf of Mr. Harleston, said this case

involved the lives of thirteen men. If the District Attorney supposed the law of the case was simple, he took a very different view of it from what that gentleman did.

The District Attorney, in reply, said that in respect to the intimation of a necessity to refer to Charleston, it was a matter of notoriety that the prisoners were in constant communication with that city. Counsel were bound to disclose the nature of testimony required, that the Court might judge of the sufficiency of the reasons for a postponement. Much of it might be to facts which the prosecution would admit; as, in reference to the question of citizenship, there would be no difficulty in conceding the fact that certain of the prisoners were not citizens of the United States. He was not tenacious as to the very day named. Without throwing the case over to the fall term, the trial could be so fixed as to afford counsel ample opportunity to collect their proofs and examine the questions of law involved. All the difficulties suggested to impede the trial were obstructions created by these defendants themselves and their confederates, and it was in the nature of taking advantage of their own wrong to seek a postponement because of the existence of a state of things for which they were responsible. It had been said, thirteen lives are at issue. He would say that many more lives were at stake—lives, in his judgment, of far greater value—the lives of innocent officers and sailors in the merchant marine. The facts are simple. The law appears to be certain. There can be no defence here, the nature of which is not visible. The only justification for the piracy would seem to

be the treason. If the prisoners ought justly to be convicted, such conviction should be speedy, in order to deter their confederates from expeditions partaking of the character of both treason and piracy.

Judge Shipman said, that he had no doubt in relation to the disposition to be made of this motion. The Court could not have several sets of rules to apply at will to the same class of cases; and even if the Court had power to adopt a different rule in some criminal cases from that fixed in others of the same grade, it would be very questionable whether such power ought to be exercised. The law had made no distinction in regard to this class of criminal offences. Upon the statute book of the United States are various acts of Congress defining atrocious crimes punishable capitally; and among these, is the crime of piracy, or robbery upon the high seas, for which the defendants are indicted. In all cases where parties are charged with criminal offences, and especially with capital crimes, it is customary to give the defendants a reasonable time for the preparation of their defence; and the Court must always assume and act, so far as the technical proceedings are concerned, upon the presumption of innocence which the law always interposes. The Court cannot take into consideration many of the suggestions made by counsel for the Government or for the defence; and in disposing of this motion, I wish it to be distinctly understood that I do so just as I should in any other case of alleged robbery or piracy upon the high seas, where, if the defendants be convicted, they must

suffer, according to the statute, the penalty of death. I cannot look at other considerations. I cannot anticipate other defences. In the administration of the criminal law, although the principles are usually very simple, and although, for aught I know, they may be as simple when applied to this case as to any other, yet in the application of those principles, there is often ground for difference of opinion. Courts that have been long regarded as entitled to very great respect for learning, discrimination, and experience, frequently differ as to the application of principles of law to particular cases. In view of this fact, in capital cases, it has been a rule usually adhered to in the United States Circuit Courts (which are so constituted by the Act of Congress that two Judges are authorized to sit) to have, if applied for, a full Court, so that the defendant might have the benefit, if I may so speak, of the chance of a division of opinion. For such division of opinion constitutes the only ground upon which the case can be removed to a higher Court for revision. In this view of the case, and upon the strenuous application of the defendants for the presence of a full Court, I certainly cannot deny the application consistently with my judgment of what is right and proper; and I say this with a full recognition of the importance of this trial. I might add, it may be desirable for the Government, in the event of a certain determination of this case, that in the preliminary proceedings—the time fixed for trial and the constitution of the Court—there should be nothing to weaken the full and appropriate effect of such determination.

After some observations in regard to two exceptional cases—that of Gordon, on his first trial for engaging in the slave trade,[2] and the case of the parties convicted of murder on board the ship "Gen. Parkhill," both cases having been tried before a District Judge sitting alone, the counsel for the defendant in each case making no request to have a full Court—Judge Shipman went on to say, that in consequence of Judge Nelson's engagements in another District, in September, and in view of his confinement with the effects of a fall from his carriage, which would prevent his sitting in August, he (Judge Nelson) could not probably hear this case until the October term. He therefore ordered the trial to be set down for the third Monday of October, at eleven o'clock.

The prisoners were remanded to the custody of the Marshal, and their manacles, which had been removed while they were in Court, being replaced, they were taken to the Tombs.

[2] The second trial of Gordon, resulting in a conviction, took place before a full Court, Mr. Justice Nelson sitting with Judge Shipman.

TRIALOF THEOFFICERS AND CREW OF THE SCHOONER SAVANNAH, ON THE CHARGE OF PIRACY

UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK

Wednesday, Oct. 23, 1861.

The United States

against

Thomas Harrison Baker,
Charles Sydney Passalaigue,
John Harleston,
Joseph Cruse del Carno,
Patrick Daly,
John Murphy,
Martin Galvin,
Henry Cashman Howard,
Henry Oman,
William Charles Clarke,
Richard Palmer,

Alexander Carter Coid,
Albert G. Ferris.
Hon. Judges NELSON and SHIPMAN Presiding.

Counsel for the United States:

E. DELAFIELD SMITH, WM. M. EVARTS, SAML. BLATCHFORD, ETHAN ALLEN

Counsel for the Defendants:

BOWDOIN, LAROCQUES & BARLOW, DANIEL LORD, JAMES T. BRADY, ALGERNON S. SULLIVAN, JOSEPH H. DUKES, ISAAC DAVEGA, MAURICE MAYER.

E. Delafield Smith, Esq., United States District Attorney, stated that he desired to use Albert Gallatin Ferris, one of the prisoners indicted, as a witness, and would therefore enter a *nolle prosequi* in regard to him.

The Court: Are the prisoners to be tried jointly?

Mr. Lord: I believe so, sir.

The Clerk called over the names of the prisoners, directing them to challenge the Jurors as called.

Judge Nelson: Those of the prisoners who desire to do so may take seats by the side of their counsel.

The Clerk proceeded to call the panel.

Edward Werner called, and challenged for principal cause by Mr. Smith:

Q. Have you any conscientious scruples that would prevent your finding a verdict of guilty, in a capital case, where the evidence was sufficient to convince you that the prisoner was guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Have you read the account in the newspapers of the capture of the Savannah privateers?

A. Yes, sir.

Q. Have you ever formed or expressed any opinion as to the guilt or innocence of these prisoners?

A. No, sir.

Q. Have you ever formed or expressed any opinion as to whether they were guilty of piracy, if the facts were as alleged?

A. No, sir.

Challenge withdrawn. *Juror sworn.*

William H. Marshall called, and challenged for principal cause:

Q. Have you any conscientious scruples that would prevent your finding a verdict of guilty in a capital case, where the evidence was sufficient to convince you that the prisoner was

guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. You read the account of the privateer Savannah?

A. I believe I have.

Q. Have you formed or expressed any opinion as to the guilt or innocence of the prisoners?

A. No, sir.

Q. Have you ever formed or expressed any opinion as to whether they were guilty of piracy, if the facts were as alleged?

A. I have not formed any opinion as to these men.

Q. As to the general question, whether cruising under a commission from the Confederate States is piracy?

A. I do not think I have formed any opinion, or expressed one.

Challenge withdrawn. *Juror sworn.*

William Powell called, and challenged for principal cause by Mr. Smith:

Q. Have you any conscientious scruples that would prevent your finding a verdict of guilty, in a capital case, where the evidence was sufficient to convince you that the prisoner was guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Have you formed or expressed any opinion as to the guilt or innocence of these prisoners?

A. I have not formed any opinion that would prevent me from

giving a verdict according to the facts of the case. I have read the account, and I presume have formed such an opinion as most men do from reading an account, if the facts be so and so.

Q. Have you formed any opinion as to whether cruising, under a commission from the Confederate States, is piracy?

A. Yes, sir, I have.

Mr. Evarts objected that this was purely a question of law, and one jurors should not be inquired of.

The Court sustained the objection.

Q. Did you believe the accounts which you read of this transaction?

A. Well, it is difficult to say. There is so much published in the papers now-a-days that is not correct, that I am hardly prepared to say I believe anything I see, without palpable evidence. I believe the fact of the capture of the Savannah.

Q. Did you read what had been done by the Savannah before she was captured?

A. Well, I formed no opinion with regard to that.

Q. Did you form an opinion of the character of the act with which the defendants were charged?

A. No, sir.

Q. Do you entertain the settled opinion that acting under a commission from President Davis, or the Confederate Government, constitutes piracy?

Mr. Evarts objected that this was a question of law.

The Court: I doubt whether that is a question that would be

proper.

Mr. Larocque: This is a very peculiar case, as your honor is well aware. It is a case of first impression in the courts of the United States. It is a case in which, probably, there will be very little difference between the prosecution and the defendants as to the mere facts which are charged in this indictment, and it is a case in which jurors who present themselves to be sworn, if they have any bias or prejudice whatever, have it rather in reference to the character of the acts than as to the acts themselves having been committed or not having been committed. Now, we all know, if your honor please, that in all criminal trials a great deal of discussion has always taken place with reference to the jurisdiction of the jury over questions of law. The Courts have held that they are bound to receive their instructions on the law from the Court; but, at the same time, if they do not act in pursuance of the instructions which they receive, it is a matter between them and their own consciences, and it is a matter which no form of review in these Courts will reach. Now, one of my associates has handed to me an authority upon this subject from 1st Baldwin's Reports—that on the trial of Handy, in 1832, for treason, Judge Grier held that a juror who had formed an opinion that the riots in question did not amount to treason, was incompetent; and, in the case of the United States *v.* Wilson, it was held that a juror was incompetent who stated, on being challenged, that he had read the newspaper account of the facts at the time, and had come to his own conclusion, and had made

up his mind that the offence was treason, although he had not expressed that opinion, nor formed or expressed an opinion that the defendant was or was not engaged in the offence. It seems to me that these authorities cover precisely the case before the Court, the only difference being that this is a charge of piracy, and the other a charge of treason.

Judge Nelson: The only difference is that there the question was put to the juror as to the crime, after it appeared he had read the account of the transaction, which involved both the law and the facts—involved the whole case; but as we understand your question, you put a pure question of law, which we do not think belongs to the juror.

Mr. Larocque: I understand your honor to rule the question is not admissible.

Judge Nelson: Yes.

Defendants' Counsel took exception.

Mr. Larocque: Permit me to put the question in two forms.

Q. Have you formed or expressed the opinion that the acts charged, if proved, constitute the offence of piracy?

The Court: That question is admissible.

A. I have not expressed the opinion, and I can hardly say I have formed an opinion, because I am not sufficiently informed on the law to do so.

Challenge withdrawn. *Juror sworn.*

The Court: Then the other form of the question is withdrawn?

Mr. Larocque: Yes, sir; we are satisfied with the form of the

question the Court allows us to put.

James Cassidy called. Challenged for principal cause, by Mr. Larocque, for the defendants.

Q. Did you read the account of the capture of the Savannah privateer?

A. I believe I did.

Q. Have you formed or expressed any opinion upon the guilt or innocence of these prisoners?

A. I believe not, sir. I may have made some mention of it at the time of reading the transaction, but not to express any opinion.

Q. Have you formed or expressed an opinion whether the facts, if proved, constitute the offence of piracy?

A. No, sir.

By Mr. Smith:

Q. Have you any conscientious scruples on the subject of capital punishment that would interfere with your rendering a verdict of guilty, if the evidence proved the prisoners to be guilty?

A. No, sir.

Challenge withdrawn. *Juror sworn.*

Joel W. Poor called. Challenged for principal cause by Mr. Smith:

Q. Have you any opinion on the subject of capital punishment which would prevent your rendering a verdict of guilty, if the evidence was such as to satisfy you?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Have you read the account of the capture of the Savannah privateers?

A. I have.

Q. Have you formed or expressed any opinion as to the guilt or innocence of the prisoners?

A. I think not, sir.

Q. Have you formed or expressed any opinion whether the facts charged, if proved, constitute the offence of piracy?

A. I have not.

Q. Have you never conversed on this subject?

A. I do not think I have.

Q. Have you no recollection of having conversed upon it at all?

A. I may have talked about it something at the time, but I do not recollect.

Q. Are you a stockholder, or connected with any marine insurance company?

A. No, sir.

Q. Have you been engaged in Northern trade?

A. No, sir.

Challenged peremptorily, by prisoners.

Thomas Dugan called. Challenged for principal cause, by Mr. Smith:

Q. Have you any conscientious scruples that would interfere with your rendering a verdict of guilty, if you deemed the prisoners guilty upon the evidence?

A. I have strong conscientious scruples.

Mr. Smith asked that the juror stand aside.

Defendants' Counsel objected to the question, as not proper in form. Objection sustained.

Q. In a capital case, where the evidence is sufficient to satisfy your mind of the prisoner's guilt, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. If I may explain, I would endeavor to find a verdict; but I believe my sympathy would control my judgment to that extent that I would not be able to do my duty between the people and the prisoner. I have been on a jury before, and I doubt that my judgment would be controlled by my sympathy.

Mr. Larocque: The witness has not said his sympathies would be of that strength that would prevent his finding a verdict of guilty, if the evidence was satisfactory. A juror that has doubts of himself is the most honest and reliable, according to all experience in criminal trials.

The Court: Examine him on that point.

By Mr. Larocque:

Q. Suppose that upon this trial the facts charged in this indictment were proved by clear and satisfactory evidence, and the Court should instruct you, upon that evidence, that those facts constitute the offence of piracy, would your conscientious scruples be so strong as to prevent your finding a verdict of guilty in such a case as that?

A. There must be not a shadow of doubt. It must be strong and

conclusive in my mind before a verdict is rendered.

Q. But where there was strong, conclusive evidence, you would render a verdict of guilty?

A. Yes, sir.

Mr. Evarts: It is pretty apparent that the juror does not regard himself as in a position to deal impartially with this question, which involves human life. The intention of this cause of challenge is, that the juror should be in a position to yield to the evidence that just assent which its character is entitled to call for, unimpeded by his repugnance to the result when fatal to human life. Still, if your honor should not think that upon this ground he ought to be excluded absolutely, certainly it would be consistent with the course of practice, and with the just feeling of the juror, that he should stand aside until the panel be made up.

Mr. Brady: That practice I understand not to prevail any longer, since it has been provided that the empanneling of jurors in the United States Courts shall be the same as in the State Courts, and we do not consent to any such principle as the gentleman proposes. Your honor has decided that a juror, to disqualify him from serving in a capital case, must say that his conscientious scruples are of such a character that, though the evidence be clear and conclusive under the law, as stated by the Court, they would prevent his doing his duty and giving a verdict of guilty. To my mind, nothing can be more clear and satisfactory than the statement of the juror himself, which exhibits a state of mind that should be possessed by every juror; that is, that

he must be satisfied beyond all reasonable doubt of the guilt of the accused before rendering a verdict of guilty; and when be speaks of his sympathy on behalf of human life, it is only that sympathy which the law recognizes where it gives the prisoner the benefit of every doubt. It is true he does use the expression that there must not be the shadow of a doubt; but when the Court comes to expound the law, he will be instructed that it must be a reasonable doubt. I do not see anything against the juror on the ground of conscientious scruples. Your honor knows that the prosecution have no peremptory challenge in cases of piracy or treason, and the old practice of setting aside jurors until the panel is exhausted, and then, if not able to make up twelve without the rejected jurors, requiring their acceptance, has passed. That is decided in the case of Shackleford, in 18 Howard's Reports.

The Court (to the Juror): We do not exactly comprehend the views you entertain upon this question; therefore we desire, for our own satisfaction, to put some questions to you, to ascertain, if we can, the state of your mind and opinions upon these questions, and see whether you are a competent juryman or not in a capital case. It is a very high duty, and a common duty, devolving upon every respectable citizen. The question is this—and we desire that there may be no delusion or misapprehension on your mind in respect to it—in a capital case, if the proof on behalf of the Government should be such as to satisfy your mind that the prisoner was guilty of the capital offence, whether or not you have any conscientious scruples as respects capital punishment,

that would prevent your rendering a verdict of guilty?

A. In answer to that I would say that this is what troubles me: I want to do my duty; I want to render a verdict fairly and squarely as between the prisoner and the people; but I have this to contend with—I have read that people have been convicted upon the clearest testimony, and afterwards found to be innocent; and before I would have such feelings I would as soon go to the scaffold as send a person there who was not guilty. Therefore my sympathy is so strong that I am afraid to trust myself. I did serve on a former occasion, and I do not know that even then I did my duty.

Q. What do you mean by being afraid to trust yourself? Is it a conscientious feeling and opinion against the penalty of capital punishment?

A. Yes, sir, it is. I have a great abhorrence of it, if I may so express myself. Yet I should like to render a verdict, and do what is right; but I believe my feelings are too great to trust myself.

The Court: We think we are bound to set the juror aside.

Mr. Larocque: Permit me to put one question.

Q. It strikes me that you are a little at fault as to what the purport of this question is. It is not whether you have an abhorrence of convicting a prisoner of a capital offence. The question is, whether you have such conscientious scruples against capital punishment as would prevent your finding the prisoner guilty, if the facts were proved, and the Court instructed you that those facts constituted the offence?

A. I answered before. It places me in rather a peculiar position. As I said, I want it understood distinctly, I desire to do my duty; but there is a struggle between that and my sympathy, and I am afraid to trust myself.

Q. But you can draw a distinction between your sympathy and any conscientious scruples against the punishment of death, can you not?

A. Well, sir, where it comes to the point–

Q. Allow me to put the question in another way: If you are entirely satisfied, upon the evidence and instructions of the Court, that the prisoner was guilty, your conscience would not trouble you in finding him guilty?

A. Well, sir, there would be this: I would feel that persons, under the strongest kind of testimony, have been found guilty, wrongfully, and it would operate on me—the fear that I had judged wrong on the facts, and committed murder. That feeling is very strong.

Q. If the evidence satisfied you that the prisoner was guilty, would your conscience prevent your saying so?

A. It would not now. It might in the jury-room. When it comes to the point, and I feel that I hold the life of a human being, it is pretty hard to know what I would do then.

Q. Your conscience would only trouble you if you doubted that your judgment was right?

A. Yes, sir.

Mr. Larocque: I submit that the juror is competent.

Juror: You must take your chances if you take me. I still think I am not fit to sit on a jury to represent the people.

The Court: I think we must take the opinion of the juror as against himself.

Set aside. [Defendants took exception.]

John Fife called, and challenged for principal cause:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Did you read the account of the capture of the privateer Savannah?

A. I did.

Q. Have you formed or expressed an opinion as to the guilt or innocence of the prisoners?

A. I believe not, sir.

Q. Have you formed or expressed an opinion whether the facts charged, if proved, constitute the offence of piracy?

A. I have not, sir.

Q. You think you have no bias or prejudice in this case?

A. No, sir.

Challenge withdrawn. *Juror sworn.*

Thomas Costello called. Challenged for principal cause.

By Mr. Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. You know that this case is an indictment for piracy against the prisoners. Have you formed or expressed any opinion upon their guilt or innocence?

A. No, sir.

Q. Have you formed or expressed any opinion whether the facts charged against them, if proved, constitute the offence of piracy?

A. I have not, sir.

Challenge withdrawn. *Juror sworn.*

Tuganhold Kron called. Challenged for principal cause.

By Mr. Smith:

Q. In a capital case, where the evidence was sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. Yes, sir. (Question repeated.)

A. No, sir.

Q. Do you readily understand English?

A. Pretty well.

Q. You did not understand me when I asked the question the

first time?

A. No, sir.

Q. Do you understand English well?

A. Yes, pretty well. There may be some words I do not understand.

Q. Did you ever sit as a juror on a trial?

A. Yes, sir.

Q. Did you understand all the witnesses said?

A. No, because I did not hear, sometimes.

Q. Do you think you understand English well enough, so that you can hear a trial intelligently?

A. I cannot say, sir.

Q. You are not sure?

A. No, sir.

By Mr. Larocque:

Q. What is your occupation?

A. A bookbinder.

Q. Have you an establishment of your own?

A. Yes, sir.

Q. The men you employ—do they speak English or German?

A. Some English—the most of them German.

Q. And you transact your business with gentlemen who speak English?

A. Yes, sir.

Q. How long have you done so?

A. Eight years.

By the Court:

Q. How long have you been in this country?

A. Seventeen years.

Q. Have you been in business all that time?

A. I worked as journeyman ten years, and have been seven years in business of my own.

By Mr. Smith:

Q. Do you think you can understand English well enough so that you can, from the evidence, form an opinion of your own?

A. I think I will.

By Mr. Larocque:

Q. You read the account of the capture of the privateer Savannah in the newspapers?

A. Yes, sir; in some German paper.

Q. Did you form or express any opinion as to the guilt or innocence of these prisoners?

A. No, sir.

Q. Did you form or express an opinion whether the facts charged against them, if proved, constitute the offence of piracy?

A. No, sir.

Mr. Evarts: We think the juror's knowledge of the language is shown, by his own examination, to be such as should at least entitle the Government to ask that he should stand aside until it is seen if the panel shall be filled from other jurors—if that right exists. Your honor held, in the case of the United States *v.* Douglass—a piracy case tried some ten years ago—that that

right did exist.

The Court: I think we have since qualified that in the case of Shackleford. It was intended to settle that debatable question, and it was held that the Act of Congress, requiring the empanneling of jurors to be according to the practice in State Courts, did not necessarily draw after it this right of setting aside. We think the objection taken is not sustained.

Juror sworn.

Matthew P. Bogart called. Challenged for principal cause by Mr. Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your rendering a verdict of guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Have you read the account of the capture of the privateer Savannah in the newspapers?

A. I recollect reading it at the time—not since.

Q. Have you ever formed or expressed an opinion upon the guilt or innocence of these prisoners?

A. Not to my recollection.

Q. Have you ever formed or expressed an opinion whether the facts charged against them, if proved, constitute the offence of piracy?

A. I have not.

Challenge withdrawn. *Juror sworn.*

George Moeller called. Challenged for principal cause by Mr. Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. Have you read the account of the capture of the Savannah? *A.* Yes, sir.

Q. Have you formed or expressed any opinion as to the guilt or innocence of these prisoners?

A. No, sir.

Q. Have you formed or expressed any opinion as to whether, if the facts were proved, as alleged, it was piracy?

A. I do not know what the facts are, sir. I have only read an account of the capture.

Challenge withdrawn. *Juror sworn.*

Robert Taylor called. Challenged for principal cause, by Mr. Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque, for the prisoners:

Q. You read of the capture of the privateer Savannah?

A. I think I have.

Q. Did you form or express any opinion as to the guilt or innocence of the prisoners?

A. Not that I know of, sir.

Q. Have you formed or expressed any opinion whether the facts, if proved, constitute the offence of piracy?

A. No, sir, not any.

Challenge withdrawn. *Juror sworn.*

Daniel Bixby called. Challenged for principal cause, by Mr. Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. I have not.

By Mr. Larocque:

Q. Have you ever formed or expressed any opinion as to the guilt or innocence of the prisoners?

A. I have not.

Q. Or whether the facts, if proved, constitute the offence of piracy?

A. No, sir.

Challenge withdrawn. *Juror sworn.*

Ira L. Cady called. Challenged for principal cause, by Mr.

Smith:

Q. In a capital case, where the evidence is sufficient to convince you of the guilt of the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque:

Q. You know what this case is for?

A. I believe I understand it.

Q. An indictment of piracy against the privateersmen captured on the Savannah?

A. Yes, sir.

Q. Have you formed or expressed any opinion upon the guilt or innocence of the prisoners?

A. I do not recollect that I have.

Q. Have you formed or expressed any opinion whether the facts, if proved, constitute piracy?

A. I do not think I have.

Q. Have you any opinion now upon either of these subjects?

A. I cannot say that I am entirely indifferent of opinion on the subject, but still I have not formed any definite opinion.

Q. Your mind, however, is not entirely unbiased upon the question?

A. Well, no, sir—not if I understand the question; that is, the question whether the facts, if proved, constitute the offence of piracy?

Mr. Larocque submitted that the juror was not indifferent.

Mr. Evarts: All that has been said by the juror is that, on the question of whether the facts charged constitute the offence of piracy, he has no fixed opinion; but he cannot say he has no opinion on the subject. He is ready to receive instruction from the Court.

Mr. Larocque contended that, as the question of whether the facts alleged constituted piracy, or not, was a most important one to be discussed, they were entitled to have the mind of the juror entirely blank and unbiased on that subject.

The Court: Let us see what the state of mind of the juror is.

Q. You mentioned, in response to a question put to you, that you had read an account in the newspapers of the capture of this vessel.

A. I was not asked that question. I have no mind made up in respect to the subject that would prevent my finding a verdict in accordance with the evidence; but I said I was not entirely devoid of an opinion in regard to the case—that is, the offence.

Q. Have you read an account of the capture of this vessel?

A. Yes, sir; I read it at the time.

Q. Is it from the account, thus read, of the transaction of the capture, that you found this opinion upon?

A. No, sir; it is not that. It is upon the general subject that I mean to be understood—not in reference to this case particularly.

Q. Do you say, upon the general question, that you have an opinion?

A. Well, not fully made up. I have the shadow of an opinion about it.

Q. Not a fixed opinion?

A. No, sir; I would be governed by the law and instructions of the Court.

Q. You are open to the control of your opinion upon the facts and law as developed in the course of the trial?

A. Certainly, sir.

The Court: We do not think the objection sustained.

Challenged peremptorily by the prisoners.

Samuel Mudget called. Challenged for principal cause.

By Mr. Smith:

Q. In a capital case, where the evidence is sufficient, in your opinion, to convict the prisoner, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. I have not.

By Mr. Larocque:

Q. You have read the account of the capture of the privateer Savannah?

A. Yes, sir; at the time.

Q. Have you formed or expressed any opinion upon the guilt or innocence of these privateersmen?

A. I have not.

Q. Have you formed or expressed an opinion whether the acts charged upon them, if proved, constitute piracy?

A. No, sir; I have not formed any opinion with regard to the

question whether it was piracy or not.

Challenged peremptorily by the prisoners.

George H. Hansell challenged for principal cause.

Q. In a capital case, where the evidence is sufficient to convince you that the prisoner was guilty, have you any conscientious scruples that would prevent your finding a verdict of guilty?

A. No, sir.

By Mr. Larocque:

Q. Have you read the account of the capture of the Savannah privateer?

A. I believe I read the account at the time. I have a very indistinct recollection of it.

Q. Have you formed or expressed an opinion as to the guilt or innocence of the prisoners?

A. I do not remember that I have, sir. I certainly do not have any opinion now; and certainly would not have until I have heard the evidence.

Q. Do you say you do not recollect whether you have formed or expressed any opinion?

A. I do not remember that I have, sir. I may, on reading the article, have expressed an opinion on it; but I am not positive of that.

Q. Have you formed or expressed an opinion whether the facts charged, if proved, amount to piracy?

A. I should not consider myself competent to form an opinion

upon that until I have heard the law on the subject.

Challenge withdrawn. *Juror sworn.*

Panel completed.

DISTRICT ATTORNEY'S OPENING

Mr. E. Delafield Smith opened the case for the prosecution. He said:

May it please the Court, and you, Gentlemen of the Jury:

The Constitution of the United States, in the eighth section of the first article, authorized the Congress, among other things, to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

In pursuance of that authority, the Congress, on the 30th of April, 1790, made provisions contained in an act entitled "An Act for the punishment of certain crimes against the United States." I refer to the 8th and 9th sections of that act, which is to be found in the first volume of the U.S. Statutes at Large, page 112.

In the State Courts, gentlemen, it is common to say that the jury is judge both of the law and the fact; but such is not the case in the United States Courts. The Court will state to you the law, which you are morally bound to follow. But in opening this case, I refer to the statutes for the purpose of showing you precisely what the law is supposed to be under which this indictment is found, and under which we shall ask you for a verdict.

The 8th section of the act of 1790, commonly called "The

Crimes Act," and to which I have just referred, declares, that if any person or persons shall commit, upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State, murder or robbery, or any other offence which, if committed within the body of a county, would, by the laws of the United States, be punishable with death; or if any captain or mariner of any ship or other vessel shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship; every such offender shall be deemed, taken, and adjudged to be a pirate and felon, and, being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may first be brought.

The 9th section of the same act provides, that if any citizen shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high sea, under color of any commission from any foreign prince or state, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged, and taken to be a pirate, felon, and robber, and, on being thereof convicted, shall suffer death.

A statute, on this subject, enacted in 1819, expired by its own limitation; but on the 15th of May, 1820, an act was passed making further provisions for punishing the crime of piracy. This law is printed in the third volume of the U.S. Statutes at Large, page 600. The 3d section provides, that if any person shall, upon the high seas, or in any open roadstead, or in any haven, basin, or bay, or in any river where the sea ebbs and flows, commit the crime of robbery in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person shall be adjudged to be a pirate; and, being thereof convicted before the Circuit Court of the United States for the district into which he shall be brought, or in which he shall be found, shall suffer death.

I now refer to the act of March 3d, 1825, to be found in the 4th volume of the Statutes at Large, page 115. It is entitled, "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes." I cite it simply on the question of jurisdiction. The 14th section provides, that the trial of all offences which shall be committed upon the high seas or elsewhere, out of the limits of any State or district, shall be in the district where the offender is apprehended, or into which he may be first brought. The twenty-fifth section of this act repeals all acts, or parts of acts, inconsistent therewith.

Under the act of 1790 a question of construction arose, in the Supreme Court of the United States, as to whether robbery on the high seas was punishable with death. It was settled (3 Wheaton,

610) that the statute did punish robbery with death if committed on the high seas, even though robbery on land might not incur that extreme penalty. I refer to the United States *v.* Palmer, 3 Wheaton, 610; the United States *v.* Jones, 3 Washington's Circuit Court Reports, 209; United States *v.* Howard, Id., 340; 2 Whar. Crim. Law, fifth ed., p. 543.

I have been thus particular in referring to the laws under which this indictment is framed, in order that you may perceive precisely the inquiry which we now have to make. It is, whether the statutory law of the United States has or has not been violated? You have all, undoubtedly, heard more or less of the crime of piracy as generally and popularly understood. A pirate is deemed by the law of nations, and has always been regarded as the enemy of the human race,—as a man who depredates generally and indiscriminately on the commerce of all nations. Whether or not the crime alleged here is piracy under the law of nations, is not material to the issue. It might well be a question whether, in regard to depredations committed on the high seas, by persons in a foreign vessel, under the acknowledged authority of a foreign country, Congress could effectively declare that to be piracy which is not piracy under the law of nations; but it is not material in this case. Congress is unquestionably empowered to pass laws for the protection of our national commerce and for the punishment of those who prey upon it. Congress has done so in the statutes to which I have referred. If the words "pirate and felon" were stricken out from the act of 1790, and if the statutes

simply read that any person committing robbery on the high seas should suffer death, the law would be complete, and could be administered without reference to what constitutes piracy by the law of nations.

Having thus referred to the statutory law under which this indictment was found, I will state as succinctly as possible, with due regard to fullness, fairness, and completeness, the facts in this case. In the middle or latter part of May, 1861, a number of persons in the city of Charleston, South Carolina, conceived the purpose of purchasing or employing a vessel to cruise on the Atlantic with the object of depredating on the commerce of the United States. They proceeded to the fulfillment of that design by procuring persons willing to act as captain, officers, and crew of such piratical vessel. This there was at first considerable difficulty in effecting, and it was not until many men were thrown out of employment in Charleston, by the acts of South Carolina and of what is called the Confederate Government, and by the action of the United States Government in blockading the port of Charleston and other Southern ports, that a crew could be found to man this vessel. There were no shipping articles or agreement as to wages; but it was understood that all were to share in the plunder or proceeds arising from the capture of American vessels on the high seas. We shall show to you that the prisoners at the bar were finally induced to embark on this enterprise; that Captain Baker was one of the first to engage in it; that he used exertions to obtain a crew, and succeeded, after

considerable difficulty. On Saturday, the first of June, 1861, the crew were embarked on a small pilot boat and proceeded down to opposite Fort Sumter, where they were transferred, in small boats, to the schooner Savannah. We shall show, by the declarations of the parties who stand charged here to-day, and also by the facts and circumstances of the equipment of the vessel, the intent and purpose of this voyage. The Savannah, a schooner of fifty-three or fifty-four tons, was armed with cannon and small arms. Pistols and cutlasses were provided for her men. On Sunday afternoon, the 2d of June, she sailed from opposite Fort Sumter, her crew numbering about twenty men, all of whom are here with the exception of six, who were detached to form a prize crew of the brig Joseph. On the morning of Monday, the 3d of June, a sail was descried; it was remarked among the crew that the vessel, from her appearance, was undoubtedly a Yankee vessel, as they termed it—a vessel owned in one of the Northern States of the Union. She proved to be the brig Joseph, laden with sugar, and bound from Cardenas, in Cuba, to Philadelphia. The Savannah, displaying the American flag, gave chase. When within hailing distance, Captain Baker spoke the Joseph, ordered her captain on board his schooner, and ran up the rebel standard. Captain Meyer, of the Joseph, perceiving that the Savannah was armed, and that her men were ready for assault, fearing for his safety and that of his crew, obeyed the summons. A prize crew was placed on board the Joseph—the captain of the Savannah declaring that he "was sailing under the flag of

the Confederate Government." The Savannah proceeded on her cruise. In a few hours afterward, she descried the United States brig-of-war Perry. Supposing her to be a merchant vessel, she started in pursuit, fired a gun, and finally fired several guns. On discovering, however, that the brig was a United States vessel-of-war, she attempted resistance, Captain Baker saying to his men, "Now, boys, prepare for action!" When within speaking distance, the commander of the Perry asked Captain Baker whether he surrendered, and he replied that he did. The prisoners were transferred from the Savannah to the Perry; thence to the United States steam ship-of-war, Minnesota. The Savannah was then taken in charge by a prize crew from on board the Perry and brought to New York. The Minnesota, with the prisoners on board, proceeded—on her way to New York—to Hampton Roads, where, after two days, she transferred the prisoners to the Harriet Lane, which delivered them at New York. Here they were given in charge to the United States Marshal. On my official application, a warrant was issued by a United States Commissioner, and under it the Marshal, as directed, took formal possession of and held the prisoners. They were committed for trial and were, within a few weeks afterwards, indicted by the United States Grand Jury. Although the guilt and mischief of both piracy and treason may be embraced in the crime and its consequences, the charge is not one of treason, nor necessarily of piracy, as commonly understood, but the simple one of violating the statutes to which I have referred.

The learned District Attorney here stated the evidence which he was prepared to submit, with the decisions upon which he would rest the case, and he proceeded to cite and comment upon the following, among other authorities:—U.S. *v.* Furlong, 5 Wheaton, 184; U.S. *v.* Klintock, 5 *Id.*, 144; Nueva Anna and Liebre, 6 *Id.*, 193; U.S. *v.* Holmes, 5 *Id.*, 412; U.S. *v.* Palmer, 3 *Id.*, 610; U.S. *v.* Tully, 1 Gallison, first ed., 247; U.S. *v.* Jones, 3 Wash. Circuit Court Rep., 209; U.S. *v.* Howard, 3 *Id.*, 340; U.S. *v.* Gibert, 2 Sumner, 19; U.S. *v.* Smith, 5 Wheaton, 153; 3 Chitty's Criminal Law, 1128; 1 Kent's Com., 25, note *c*, and cases cited; 1 *Id.*, 99, 100, and cases cited; 1 *Id.*, 184, 185, 186, 187, 188, 191, and cases cited. Decisions as to jurisdiction: U.S. *v.* Hicks, MS. Judge Nelson; Irvine *v.* Lowry, 14 Peters, 293, 299; Sheppard *v.* Graves, 14 Howard, 505; D'Wolf *v.* Rabaud, 1 Peters, 476, 498. Mr. Smith then continued as follows:

The atrocity of the authors and leaders of this rebellion against a government whose authority has never been felt, with the weight of a feather, upon the humblest citizen, except for crime, has been portrayed so much more eloquently than I could present it, that I should not indulge in extended remarks on that subject, even if relevant to the case. Ignominy and death will be their just portion. The crime of those who have acted as the agents and servants of these leaders is also a grave one—a very grave one—mitigated, no doubt, by ignorance, softened by a credulous belief of misrepresentations, and modified by the very air and atmosphere of the place from which these prisoners embarked.

It is, undoubtedly, a case where the sympathies of the jury and of counsel—whether for the prosecution or the defence—may be well excited in reference to many, if not all, of the prisoners at the bar, misguided and misdirected as they have been. But it will be your duty, gentlemen, while allowing these considerations to induce caution in rendering your verdict, to disregard them so far as to give an honest and truthful return on the evidence, and on the law as it will be stated to you by the Court. This is all the prosecution asks. As to the policy of ultimately allowing the law to take its course in this case, it is not necessary for us to express any opinion whatever. That is a question which the President of the United States must determine if this trial should result in a conviction. It is for him, not for us. You must leave it wholly to those who are charged with high duties, after you shall have performed yours.

The case is of magnitude; but the issue for you to determine is simple. Leaving out of view the alleged authority under which the prisoners claim to have acted, you will inquire, in the first instance, whether the seizure of the Joseph and her lading was robbery. You will be unable to discover that any element of the crime was wanting. If no actual force was employed in compelling the surrender, it is enough that the captain and crew were put in bodily fear. So the traveler delivers his purse in obedience to a request, and the crime is complete, although violence proves unnecessary. That the humble owners of the brig were despoiled of their property—how hardly earned we know

not—will not be disputed. Nor is it material that the proceeds were to be shared between the prisoners and absent confederates. As to the question of intent, it cannot be denied that the prisoners designed to do, and to profit by, what they did. They are without excuse, unless possessed of a valid commission. This brings us to the plea of authority.

A paper, purporting to be a letter of marque, signed by Jefferson Davis, was found on the Savannah. Such a commission is of no effect, in our courts of law, unless emanating from some government recognized by the Government of the United States. The political authority of the nation, at Washington, has never recognized the so-called Confederate States as one of the family of nations. On the contrary, it resists their pretensions, and proclaims them in rebellion. In this position of affairs, a court of justice will not, nor can you as its officers, regard the letter as any answer to the case which the prosecution will establish. Such is the law. It is so determined in decisions of the Supreme Court of the United States, which I have just cited.

I will now proceed with the examination of the witnesses.

Albert G. Ferris called and sworn. Examined by District Attorney Smith:

Q. Where were you born?

A. In Barnstable, Massachusetts.

Q. How old are you?

A. Fifty on the 10th of September last.

Q. Have you a family?

A. Yes, sir.

Q. Does your family reside at Charleston?

A. Yes, sir, at Charleston, South Carolina.

Q. How long have you resided at Charleston?

A. Since 1837.

Q. What has been your business there?

A. Sea-faring man.

Q. In what capacity have you acted as a sea-faring man?

A. As master and mate.

Q. In what crafts?

A. In various crafts, small and large, and steamers.

Q. Sailing out of the port of Charleston?

A. Yes, and from ports of New York, and Virginia, and other places.

Q. In what capacity were you acting just prior to the time you embarked on board the Savannah?

A. I was acting as master of a vessel sailing from Charleston on the Southern rivers, in the rice and cotton trade.

Q. What was the name of the vessel?

A. The James H. Ladson, a schooner of about seventy-five tons.

Q. Was the business in which you were engaged stopped?

A. Yes, sir.

Q. At what time?

A. In December, 1860.

Q. What was your employment after that?

A. I had no employment after that. The blockade prevented vessels from going out, although some did get out after the blockade was established.

Q. State the facts and circumstances which preceded your connection with the Savannah?

A. I joined the Savannah as a privateer, through the influence of acquaintances of mine, with whom I had sailed, and from the necessity of having something to do, and under the idea of legal rights from the Confederate Government.

Q. What did you first do in reference to shipping on the Savannah?

A. I was on the bay with an acquaintance of mine, named James Evans, who is now, I believe, at Charleston, and who spoke to me about it.

Q. Was Evans one of the crew of the Savannah?

A. Yes, he was one of the prize crew that went off with the Joseph. He solicited me to join him, and said that he knew Captain Baker, and that he and others were going in the Savannah.

Q. Where did you see him?

A. I saw him on the bay at Charleston.

Q. Did you go anywhere with him in reference to enlisting?

A. Yes, we went to the house of Bancroft & Son, and I was there introduced to Captain Baker.

Q. Did you recognize Captain Baker on the cruise?

A. Yes, I recognized him then and since.

Q. State the conversation?

A. Mr. Evans recommended me to Captain Baker as a man who was acquainted with the coast, and who was likely to be just the man to answer his purpose. I partly made arrangements with Captain Baker to—that is, he was to send for me when he wanted me. He further proposed, as nothing was doing, that he would give me a job to go to work on board the Savannah and fit her out; but I had some little business to attend to at the time and declined.

Q. State the conversation at Bancroft & Son's when you and Evans and Captain Baker were there?

A. These were the items, as near as my memory serves me: that we were going on a cruise of privateering. I considered it was no secret. It was well known, and posted through the city. Previous to that I had met some of the party, who talked about going, and who asked me whether I had an idea of going, and I said I had talked about it. They said that Captain Baker was the officer. I then declined to go, and did not mean to go in her until Saturday morning.

Q. Did you have a further interview with Captain Baker, or any others of these men?

A. I had no other interview with Captain Baker at that time. I had no acquaintance with Captain Baker, or any on board, except these men who came from shore with me.

Q. Did you see any one else in reference to shipping on this vessel, except those you mentioned?

A. I believe there was a man by the name of Mills who talked of it. He did not proceed in the vessel. I believe he fitted her out, but did not go in her.

Q. Did you talk to any one else in regard to going?

A. No; he only told me he was going to get a crew.

Q. What articles did you see drawn up?

A. There were no articles whatever drawn up, and I do not know what arrangements were made. I understood since I have been here that arrangements were made, but they were not proposed to me. It was a mere short cruise to be undertaken.

Q. Was the purpose or object of the cruise stated?

A. It was the object of going out on a cruise of privateering.

Q. When did you embark on the vessel?

A. On Saturday night, the 1st of June, 1861.

Q. Do you recollect who embarked with you that night?

A. Some five or six of us.

Q. Give their names?

A. Alexander Coid was one (witness identified him in Court), Charles Clarke was another, and Livingston or Knickerbocker was another. I do not recollect any more names. There was a soldier, whose name I do not know, who went on the prize vessel.

Q. How did you get from the dock at Charleston?

A. In a small boat to a pilot-boat, and in the pilot-boat to the Savannah in the stream. She was lying about three miles from the city, and about three-quarters of a mile from Fort Sumter.

Q. How did you get from the pilot-boat to the Savannah?

A. In a small boat.

Q. And from the dock at Charleston to the pilot-boat?

A. In a small boat.

Q. Did any one have any direction in the embarkation?

A. No one, particular. There were some agents employed to carry us down. There was no authority used whatever.

Q. When did you sail from Charleston in the Savannah?

A. On Sunday afternoon from the outer roads.

Q. When did you weigh anchor and sail from Fort Sumter?

A. On Sunday morning, about 9 or 10 o'clock.

Q. Do you know the men you saw on board?

A. Yes, sir.

Q. Do you know the names of all the prisoners?

A. I believe I do, pretty nearly. I do not know that I could pronounce the name of the steward or cook, but I know that they were with us.

(The prisoner, Passalaigue, was asked to stand up, and the witness identified him.)

Q. What was his position on board?

A. I do not know what his position was. I never learned that. He was on board as if superintending the provisions, or something of that kind.

(The prisoner, John Harleston, was asked to stand up, and witness identified him.)

Q. What position had he on board?

A. I do not know what he did on board, anything more than

that he arranged the big gun, and asked assistance to lend him a hand in managing the gun.

Q. Was he an officer, or seaman?

A. I believe he is no seaman.

Q. In what capacity did he act on board?

A. Nothing further than that, so far as I learned.

Q. Did you hear him give any directions?

A. No, sir; I was at the helm most of the time, when anything was done at the gun.

(The prisoner, Henry Howard, was asked to stand up, and witness identified him.)

Q. In what capacity was he?

A. That was more than I learned. They were all on board when I joined her.

Q. Was he a seaman or officer?

A. He stood aft with the rest of us, and assisted in working the vessel.

(The prisoner, Del Carno, was directed to stand up, and witness identified him as being the steward. He also identified Henry Oman as attending to the cooking department. The prisoner was directed to stand up, and was identified by the witness.)

Q. In what capacity was he?

A. The same as the rest—a seaman.

(Witness also identified William Charles Clarke, Richard Palmer, and John Murphy, as seamen, and Alexander C. Coid,

as seaman. Martin Galvin, the prisoner, was directed to stand up, and was identified by the witness.)

Q. Was he a seaman?

A. I do not think he was either seaman or officer.

Q. What did he do on board?

A. Little of anything. There was very little done any way.

Q. Did he take part in working the vessel?

A. Very little, if anything at all. I believe he took part in weighing anchor.

Q. You identify Captain Baker as captain of the vessel?

A. Yes, I could not well avoid that.

Q. How many more were there besides those you have identified?

A. Some six. I think about eighteen all told, not including Knickerbocker and myself.

Q. How many went off on the Joseph?

A. There were six of them.

Q. Did any of those that are now here go off on the Joseph?

A. No, I believe not. I know all here. We have been long enough in shackles together to know one another.

Q. Do you remember the names of those that went on the Joseph?

A. I know two of them—one named Hayes, and Evans, the Charleston pilot.

Q. The same Evans who went on board with you?

A. Yes, sir; he was a Charleston pilot.

Q. What did Hayes and Evans do on board?

A. They did the same as the rest—all that was to be done.

Q. Were either of them officers?

A. Mr. Evans was the Charleston pilot. He gave the orders when to raise anchor and go out. He acted as mate and pilot when he was there. I presume he had as much authority, and a little more, than any one else; he was pilot.

Q. What did Hayes do?

A. He was an old, experienced man—did the same as the rest—lived aft with the rest. He was a seaman.

Q. The other four, whose names you do not recollect, did they act as seamen?

A. Exactly, sir.

Q. Any of them as officers?

A. No, sir; if they were, they were not inaugurated in any position while I was there.

Q. What did you do?

A. I did as I was told by the captain's orders—steered and made sail.

Q. What time did you get off from the bar in Charleston?

A. We got off Sunday afternoon and made sail east, outside of the bar, and proceeded to sea.

Q. Do you remember any conversation on board when any of the prisoners were present?

A. Yes; we talked as a party of men would talk on an expedition of that kind.

Q. What was said about the expedition?

A. That we were going out privateering. The object was to follow some vessels, and that was the talk among ourselves.

Q. Did anything happen that night, particularly?

A. No, sir; nothing happened, except losing a little main-top mast.

Q. What course did you take?

A. We steered off to the eastward.

Q. Did you steer to any port?

A. No, sir; we were not bound to any port, exactly.

Q. What directions were given in respect to steering the vessel?

A. To steer off to the eastward, or east by south, just as the wind was; that was near the course that was ordered.

Q. When did you fall in with the Joseph?

A. On Monday morning, the 3d.

Q. Do you remember who discovered the Joseph?

A. I think it was Evans, at the masthead.

Q. What did he cry out?

A. He sung out there was a sail on the starboard bow, running down, which proved afterwards to be the brig Joseph.

Q. State all that was said by or in the presence of the prisoners when and after the vessel was descried?

A. We continued on that course for two or three hours. We saw her early in the morning, and did not get up to her until 9 or 10 o'clock.

Q. How early did you see her?

A. About 6 o'clock. There were other vessels in sight. We stood off on the same course, when we saw this brig,—I think steering northeast by east. We made an angle to cut her off, and proceeded on that course until we fell in with her.

Q. What was said while running her down?

A. When near enough to be seen visibly to the eye, our men, Mr. Hayes, and the others, said she was a Yankee vessel; she was from the West Indies, laden with sugar and molasses. The general language was very little among the men; in fact, sailor-like, being on a flare-up before we left port, not much was said.

Q. State what was said?

A. Well, first the proposition was made that it was a Yankee prize; to run her down and take her. That was repeated several times. Nothing further, so far as I know of.

Q. During the conversation were all hands on deck?

A. Yes, sir, all hands on deck. In fact, they had been on deck. It was very warm; our place was very small for men below. In fact, we slept on deck. No one slept below, while there, much. It was a very short time we were on board of her—from Saturday to Monday night—when we were taken off.

Q. What was said was said loud, so as to be heard?

A. Yes; it was heard all about deck. That was the principal of our concern in going out; it was our object and our conversation.

Q. When you ran along down towards the Joseph, state what was said.

A. That was about the whole of what occurred—the men talking among themselves.

Q. When you got to the Joseph what occurred?

A. She was hailed by Captain Baker, and requested to send a boat on board.

Q. Who answered the hail?

A. I believe Captain Meyer, of the brig.

Q. Would you recognize Captain Meyer now?

A. Yes, sir.

Q. State what Captain Baker said?

A. Captain Baker, as near as I can bear in mind, hailed him, and told him to come on board and fetch his papers.

Q. Did Captain Meyer come on board?

A. He lowered his boat, and came on board with his own boat and crew. Captain Baker said to him that he was under the Confederate flag, and he considered him a prisoner, and his vessel a prize to the Confederate Government.

Q. Repeat that?

A. If I bear in mind, Captain Meyer asked what authority he had to hail his vessel, or to that effect. The reply of Captain Baker, I think, was that he was under a letter of marque of the Confederate Government, and he would take him as a prisoner, and his vessel as a prize to the Southern Confederacy. I do not know the very words, but that was the purport of the statement, as near as I understood.

Q. When Captain Baker hailed the Joseph, do you remember

the language in which he hailed her?

A. I think, "Brig, ahoy! Where are you from?" He answered him where from—I think, from Cardenas; I think, bound to Philadelphia or New York.

Q. Did he inquire about the cargo?

A. No, sir, I think not, until Captain Meyer came on board. We were but a short distance from the brig. The brig was hove to.

Q. Do you remember anything further said by Captain Baker, or any of the prisoners?

A. He had some further conversation with Captain Meyer, on the deck, with respect to the vessel, where from, the cargo, and the like of that. She had in sugars, as near as my memory serves me.

Q. What flag had the Savannah, or how many?

A. She had the Confederate flag.

Q. What other flags, if any?

A. She had the United States flag.

Q. Any other?

A. No, sir, I do not know that she had any other.

Q. Did you notice what flag the Joseph had?

A. I did not see her flag, or did not notice it. I saw her name, and where she hailed from. I knew where she belonged.

Q. What was on her stern?

A. I think "The Joseph, of Rockland." I knew where it was. I had been there several times.

Q. When the sail was first descried was there any flag flying

on the Savannah?

A. No, sir.

Q. When you ran down towards the Joseph was there any flying?

A. Yes, sir, we had the Confederate flag flying, and, I believe, the American flag.

Q. Which was it?

A. I believe both flying—first one, and then the other.

Q. Which first?

A. I think the Stars and Stripes first. I am pretty certain that Mr. Evans then hauled that down.

Q. When running down toward the Joseph you had the American flag flying?

A. Yes, sir; I think so; and Mr. Evans hauled down that, and put up the Confederate flag, when we got close to her.

Q. She ran with the American flag until close to her, and then ran up the Confederate flag?

A. Yes, when some mile or so of her—in that neighborhood.

Q. Do you remember who gave the order to the prize crew to leave the Savannah and go on board the Joseph?

A. Issued the orders? Well, Captain Baker, I believe, told the pilot, Mr. Evans, to select his men, and go with the boat.

Q. And they went on board?

A. Yes, they went on board.

Q. Do you remember anything said among the men, after the prize crew went off, in respect to the Joseph, or her cargo, or

her capture?

A. Captain Meyer was there, and stated what he had in her, and where he was from, and so forth. We were merely talking about that from one to the other.

Q. Do you remember any directions given to the prize crew, as to the Joseph—where to go to?

A. I do not recollect Captain Baker directing where to get her in, or where to proceed with her. Evans was better authority, I presume, than Captain Baker, where to get her in.

Q. Any directions as to where the vessel was to be taken?

A. No, sir; either to Charleston or Georgetown—the nearest place where they could get in, and evade the blockade. That was the reason of having the pilot there.

Q. Did Captain Meyer remain on board the Savannah?

A. Yes, sir, until we were captured, and then he was transferred to the brig Perry, with the rest of us.

Q. What direction did the Joseph take after she parted from you?

A. Stood in northward and westward. Made her course about northwest, or in that neighborhood.

Q. In what direction from Charleston and how far from Charleston was the Joseph?

A. I think Charleston Bar was west of us about 50 or 55 miles.

Q. Out in the open ocean?

A. Yes, sir. I calculated that Georgetown light bore up about 35 miles in the west; but whether that is correct or not I cannot

say.

Q. Where was the nearest land, as nearly as you can state?

A. I think the nearest land was Ball's Island, somewhere in the neighborhood of north and west, 35 or 40 miles.

Q. What sail did you next fall in with?

A. We fell in with a British bark called the Berkshire.

Q. What did you do when you fell in with her?

A. We passed closely across her stern. She was steering to the northward and eastward—I suppose bound to some Northern port.

Q. That was a British brig?

A. Yes, sir.

Q. What was the next sail you fell in with?

A. The next sail we fell in with was the brig-of-war Perry.

Q. At what time did you descry her?

A. I suppose about 3 o'clock in the afternoon of the same day.

Q. Where were you when you fell in with her?

A. We were somewhere in the same parallel. We saw the brig Perry from the masthead, and stood towards her.

Q. What was said when she was seen?

A. We took her to be a merchant vessel. That was our idea, and we stood to the westward.

Q. Did you make chase?

A. Yes, sir, we stood to the westward when we saw her; and the brig Joseph, that we took, saw her. The Perry, I presume, saw us before we saw her, and was steering for us at the time we were

in company with the Joseph.

Q. How far off was the Joseph at the time?

A. Not more than three or four miles. When we made her out to be the brig-of-war Perry, we then tacked ship and proceeded to sea, to clear her.

Q. How near was the brig Perry when you first discovered she was a man-of-war?

A. I should think she was all of 10 or 11 miles off.

Q. The brig Perry made chase for you?

A. Yes, sir.

Mr. Larocque: If the Court please, from the opening of counsel I suppose he is now proceeding to that part of the case that he laid before the jury in his opening, that consists in an exchange of shots between the brig Perry and the Savannah. We object to that. There is no charge in the indictment of resisting a United States cruiser, or of any assault whatever.

Mr. Smith: What the vessel did on the same day, before and after the main charge, goes to show the purpose of the voyage —the general object of the Savannah and her crew. It may be relevant in that respect.

Mr. Larocque: We are not going to dispute the facts testified to by this witness. There will be no dispute on this trial that this was a privateer—that her object was privateering under the flag of the Confederate Government, and by authority of that Government, and, under these circumstances, the gentleman has no need to trouble himself to characterize these acts by showing anything

that occurred between the Savannah and the Perry. Your honor perceives at once that this indictment might have been framed in a different way, under the 8th section of the Act of 1790, with a view of proving acts of treason, if you please, which are made piracy, as a capital offence, by that act. The counsel has elected his charge, and he has strictly confined the charge in the indictment to the allegation of what occurred between the Savannah and the Joseph. There is not one word in the indictment of any hostilities between the Perry and the Savannah, and therefore it must be utterly irrelevant and immaterial under this indictment. Evidence on that subject would go to introduce a new and substantial charge that we have not been warned to appear here and defend against, and have not come prepared to defend against, for that reason. So far as characterizing the acts we are charged with in the indictment, there can be no difficulty whatever.

The Court: I take it there is no necessity for this inquiry after the admission made.

Mr. Evarts: We propose to show the arrest and bringing of the vessel in, with her crew.

The Court: Of course.

Mr. Evarts: That cannot very well be done without showing the way in which it was done.

The Court: But it is not worth while to take up much time with it.

Mr. Brady: The witness has stated that this vessel was

captured, and he has stated the place of her capture; and of course it is not only proper, but, in our view, absolutely necessary, that the prosecution should show that, being captured, she was taken into some place out of which arose jurisdiction to take cognizance of the alleged crime. But the cannonading is no part of that.

Q. By Mr. Smith: State the facts in regard to the capture of the Savannah by the Perry.

A. Well, the brig Perry ran down after dark and overtook us; came within hail.

Q. At what time?

A. Near 8 o'clock at night. Without any firing at all, she hailed the captain to heave to, and he said yes; she told him to send his boat on board. He said that he had no boat sufficient to go with. They then resolved to send a boat for us, and did so, and took us off. That was the result.

Q. The Perry sent her boat to the Savannah?

A. Yes, sir; we had no boat sufficient to take our crew aboard of her. We had a small boat, considerably warped, and it would not float.

Q. Where at sea was the capture made of the Savannah by the Perry?

A. It was in the Atlantic Ocean.

Q. About how far from Charleston?

A. Well, about 50 miles from Charleston light-house, in about 45 fathoms of water.

Q. How far from land?

A. I suppose the nearest land was Georgetown light, about 35 or 40 miles; I should judge that from my experience and the course we were running.

Q. Were you all transferred to the Perry?

A. Yes, sir.

Q. When was that?

A. Monday night; it was later than 8 o'clock.

Q. Transferred by boats?

A. Yes, sir; the Perry's boats. She sent her boat, with arms and men, and took us on board. There we were all arrested and put in irons that night, except the captain and Mr. Harleston, I believe. I do not know whether they were, or not.

Q. Was Mr. Knickerbocker put on board the Perry, with the rest?

A. Yes, sir, and on board the Minnesota, with us.

Q. Who were put in charge of the Savannah? Were there any men of the Perry?

A. Yes, sir; I believe they sent a naval officer on board to take charge of her, and a crew; and I think they took Mr. Knickerbocker and Capt. Meyer, too, on board the Savannah.

Q. Did you hear the direction as to the port the Savannah should sail to after the prize crew were put on board?

A. To New York I understood it was ordered. I was told that she was ordered to New York.

(Objected to as incompetent.)

Q. In respect to the Perry, what course did she take after you were taken on board?

A. As informed by the captain, next day, she was bound to Florida, to Fernandina, to blockade.

Q. When did she fall in with the Minnesota?

A. About the third day after our capture, I think; lying 8 or 10 miles off Charleston.

Q. In the open ocean?

A. Yes, sir.

Q. You were all transferred to the Minnesota?

A. Yes, sir.

Q. What did the Minnesota do?

A. We were confined on board the Minnesota.

Q. When was it you went on board the Minnesota?

A. I think on Wednesday or Thursday; I forget which.

Q. You were captured on Monday night?

A. Yes, sir, the 3d of June, and I think it was on Wednesday or Thursday (I do not know which) we went on board the Minnesota.

Q. How long did you lie off Charleston?

A. Several days.

Q. At anchor?

A. The ship was under way sometimes, steering off and on the coast.

Q. How far from Charleston?

A. I think in 8 or 9 fathoms of water, 8 or 10 miles from the

land.

Q. Where did the Minnesota proceed from there?

A. To Hampton Roads.

Q. Were all the persons you have identified here on board the Minnesota?

A. Yes, sir.

Q. State the facts as to transfer from ship to ship?

A. We were transferred from the Savannah to the Perry; from the Perry to the Minnesota; from the Minnesota to the Harriet Lane.

Q. All of you?

A. Yes, sir; all.

Q. State, as near as you can, where, at Hampton Roads, the Minnesota came?

A. She came a little to the westward of the Rip Raps; I suppose Sewall's Point was bearing a little to the west of us, 3/4 or 1/2 a mile to the west of us; I should judge west by south. I am well acquainted there. We call it 24 miles from Old Point Comfort.

Q. What was the nearest port of entry to where you were anchored?

A. Norfolk, Va.

Q. How far from Fortress Monroe?

A. A mile, or 1-1/8 or 1-1/4—not a great distance.

Q. How long did you lie there before you were transferred to the Harriet Lane?

A. Several days. I did not keep any account. Some two or three

days.

Q. And you were brought to this port in the Harriet Lane?

A. Yes, sir.

Q. And all the prisoners you identified to-day were brought here?

A. Yes, sir, to the Navy Yard, Brooklyn; there transferred to a ferry-boat and brought to the Marshal's office here.

Mr. Evarts: If the Court please, we deem it a regular and necessary part of our proof to show the manner of the seizure of this vessel by the U.S. ship Perry; to show that it was a forcible seizure, by main force, and against armed forcible resistance of this vessel. Besides being almost a necessary part of the circumstances of the seizure, it is material as characterizing the purpose of this cruise, and the depth and force of the sentiment which led to it, and the concurrence and cohesion of the whole ship's crew in it.

The Court: What necessity for that after what has been conceded on the other side?

Mr. Evarts: They concede that she was seized; but do they concede that, as against all those accused, the crime of piracy is proved—the concurrence of the whole—and that the only question is, whether the protection claimed from what is called the privateering character of the vessel shields them?

The Court: I understand the admission to be broad.

Mr. Evarts: If as broad as that, that there is no distinction taken between the concurrence of these men, it is sufficient.

Mr. Brady: We have said nothing about that?

The Court: So far as the capture is concerned, that does not enter into any part of the crime, and has no materiality to the elements of this case at all. The force that may enter into the crime is in the capture by the privateer of the Joseph. I do not want to confound this case by getting off on collateral issues; and so far as concerns the animus, or intent, I understand it to be admitted.

Mr. Evarts: My learned friends say that on this point they have not said anything as to the jointness or complicity of the parties in this crime. Now I think your honor would understand that a concurrence in resistance, by force, of an armed vessel of the United States, bearing the flag of the United States, and undertaking to exercise authority over it, would show their design.

The Court: Have you any question as to the facts?

Mr. Evarts: The Government have all the facts. Stripped of all the circumstances that attended the actual transaction, it would appear as if, when the brig Perry came along, these people at once surrendered, gave up, and submitted quietly and peacefully. As against that, we submit the Government should protect itself by proving the actual transaction.

Mr. Brady: One thing is certain, that if these men committed any offence whatever, it was committed before they saw the Perry; it was an act consummated and perfect, whatever may have been its legal character, and whatever may have been the

consequences which the law would attach to it. The proof of the capture of the Savannah by the Perry is in no way relevant, except in proving jurisdiction, for which purpose alone is it of any importance that it should be mentioned here. And whether the capture was effected after a chase, or without one, against resistance, or by the consent of the persons to that from which they could not escape, is of no possible consequence in any aspect of the case. Whether there was firing or armed resistance can make no difference. It cannot bear on the question whether all the defendants are responsible for the acts of each other, like conspirators. It may be, as the counsel for the prosecution holds, that when you show they did set out on a common venture each became the agent of the other. That may be, and they must take the responsibility of trying the case on such a theory of the law as they think proper. We would not feel any hesitation in saying they all acted with a common design, only that there are some of the prisoners that we have had no communication with, and it may be that some of them went on board without knowing what the true character of the enterprise was. It is sufficient now to object that the question, whether there was resistance or not, after the Perry came up, is of no consequence in deciding the question of whether the men are responsible.

Mr. Evarts: My learned friend is certainly right in saying that the crime was completed when the Joseph was seized; but it does not follow that the proof of what the crime was, and what the nature of the act was, is completed by the termination of

that particular transaction. You might as well say that the fact of a robbery or theft has been completed by a pickpocket or highwayman when his victim has been despoiled of his property; and that proof of the crime prohibits the Government from showing the conduct of the alleged culprit after the transaction —such as evading the officer, running away from or resisting the officer.

The Court: You do not take into account the admission of the counsel. I believe the subsequent conduct of the privateers, if the intent with which they seized and captured the Joseph was in question, would be admissible; but when this is admitted broadly by the counsel for the defendants, I do not see why it is necessary to go into proof with a view to make out that fact, except to occupy the time of the Court.

Mr. Evarts: I am sure your honor will not impute to us any such motive. The point of difficulty is: my learned friends do not admit the completeness of the crime by all the prisoners, subject only to the answer whether the privateering character of the enterprise protects them. The moment that is admitted, I have no occasion to dwell upon the facts.

The Court: I understand the admission as covering all the prisoners, as to the intent.

Mr. Brady: That she was fitted out as a privateer—the enterprise, and capture of the Joseph.

Mr. Smith: Is the admission that all were engaged in a common enterprise, and all participators in the fact?

The Court: So I understand the admission, without any qualification.

Mr. Smith: Do we understand the counsel as assenting to the Court's interpretation as to the breadth of the admission?

Mr. Brady: There is no misunderstanding between the Court and the counsel; but the learned gentlemen seem not to be satisfied with the admission we made. The intent is, of course, an element in the crime of piracy. There must be an *animus furandi* established, in making out the crime; and that is, of course, a question about which we have a great deal to say, both as to the law and the fact, at a subsequent stage of the case. When the counsel proposed to prove the firing of cannon, and armed resistance, we said—what we say now—that we do not intend to dispute the facts proved by the witness on the stand: that the Savannah was, at the port of Charleston, openly and publicly, without any secresy (to use the witness's language, it was "posted"), fitted out as a privateer, in the service of the Confederate States, under their flag, and by their authority; that it was so announced, and that these men were shipped on board of her as a privateer. All that, there is no intention to dispute at all; and, of course, that all the men who shipped for that purpose were equally responsible for the consequences, we admit.

Mr. Evarts: Do you admit that all shipped for the purpose? If we can prove their conduct, concurring in this armed resistance, then I show that they were not there under any deception about its being a peaceable mercantile transaction. I may be met by

the suggestion that, so far as the transaction disclosed about the Joseph is concerned, there was not any such depth of purpose in this enterprise as would have opposed force and military power in case of overhauling the vessel. It would seem to me, with great respect to the learned Court, that when the facts of the transaction can be brought within very narrow compass, as regards time, it is safer that we should disclose the facts than that admissions should be accepted by the Court and counsel when there is so much room for difference of opinion as to the breadth of the admission. We may run into some misunderstanding or difference of view as to how far the actual complicity of these men, or the strength of their purpose and concurrence in this piratical (as we call it) enterprise, was carried.

Mr. Lord: If your honor will permit, it appears to me that this is exceedingly plain. The notoriety and equipment of the vessel—all the character of the equipment—the sailing together—all that is covered by the admission of my friend, Mr. Brady. So far as to there being a joint enterprise up to the time of the capture of the Joseph, it seems to me there is nothing left. Now, what do they wish? They wish to show, what is in reality another, additional, and greater crime, after this capture of the Joseph, for which we alone are indicted, as they say, for the purpose of showing that we assented to this, which we went out to do.

Your honor knows that, if we have any fact to go to the jury, they are getting into this case a crime of a very different character and of a deeper dye, for which they have made no

charge, and which does not bear upon that which, if a crime at all, was consummated in the capture of the Joseph—the only crime alleged in the indictment. I submit that they cannot, with a view of showing complicity in a crime completed, show that the next day the men committed another crime of a deeper character. I think it is not only irrelevant, but highly objectionable.

The Court: We are of opinion that this testimony is superfluous, and superseded by the admission of the counsel. I understand the admission of the counsel to be, that the vessel was fitted out and manned by common understanding on the part of all the persons on board, as a privateer; and that in pursuance of that design and intent, and the completion of it, the Joseph was captured. That is all the counsel can ask. That shows the intent—all that can be proved by this subsequent testimony; and unless there is some legitimate purpose for introducing this testimony, which might, of itself, go to show another crime, we are bound to exclude it.

Mr. Evarts: We consider the decision of your honor rests upon that view of the admission, and we shall proceed upon that as being the admission.

The Court: Certainly; if anything should occur hereafter that makes it necessary, or makes it a serious point, the Court will look into it.

Examination resumed by District Attorney Smith.

Q. You stated, I believe, that it was after 8 o'clock in the evening when the boat of the Perry came to the Savannah?

A. Yes, sir.

Q. Who was in that boat?

A. There was a gentleman from the Perry; I do not know that I ever saw him before; an officer and boat's crew,—I suppose 15 or 20 men.

Q. One of the United States officers?

A. Yes, sir; some officer from the brig Perry boarded us, and demanded us to go on board the Perry.

Q. Where were the crew of the Savannah at the time the boat came from the Perry?

A. All on deck, sir.

Q. At the time the Savannah was running down the Joseph, what time was it?

A. We got up to the Joseph somewhere late in the forenoon, as near as my memory serves me.

Q. I want to know whether all the officers and crew of the Savannah were on duty, or not, at the time you were running down?

A. Yes, sir; there were some walking the deck, and some lying down, right out of port; the men, after taking a drink, did not feel much like moving about; they were all on deck.

Q. Was there any refusal to perform duty on the part of any one?

A. No, sir; all did just as they were told.

Q. How was the Savannah armed, if armed at all?

A. I never saw all her arms, sir.

Q. What was there on deck?

A. A big gun on deck.

Q. What sort of a gun?

A. They said an eighteen-pounder; I am no judge; I never saw one loaded before.

Q. A pivot gun?

A. No, sir, not much of a pivot. They had to take two or three handspikes to round it about.

Q. It was mounted on a carriage, the same as other guns?

A. Yes, sir.

Q. With wheels?

A. I believe so; I took no notice of the gun.

Q. Reflect, and tell us how the gun was mounted?

A. It was mounted so that it could be altered in its position by the aid of handspikes; it could be swung by the use of handspikes.

Q. The gun could be swung on the carriage without moving the carriage?

A. I do not know that part of it; I know the men complained that moving the gun was hard work.

Q. What other arms had you on board?

A. I saw other arms on board,—pistols, I believe, and cutlasses.

Q. How many pistols did you see?

A. I saw several; I do not know how many.

Q. About how many cutlasses?

A. I cannot say how many; I saw several, such as they were—

cutlasses or knives, such as they were.

Q. Where were the cutlasses?

A. Those were in the lockers that I saw; I never saw them until Monday noon, when we ran down the Joseph; I saw them then.

Q. Where were they then?

A. I saw them in the lockers that lay in the cabin.

Q. When the Perry's boat came to you where were they?

A. Some out on the table, and some in the lockers.

Q. When you captured the Joseph where were they?

A. I think there were some out on the table, and about the cabin; the pistols, too; but there were none used.

Q. Were any of the men armed?

A. No, sir; I saw none of our men armed, except in their belt they might have a sheath knife.

Q. Where were all hands when you captured the Joseph, in the forenoon of Monday?

A. All on deck, sir; there might be one or two in the forecastle, but most on deck, some lying down, and some asleep.

Q. What size is the Savannah?

A. I think in the neighborhood of 50 to 60 tons.

Q. What is the usual crew for sailing such a vessel, for mercantile purposes?

A. I have been out in such a boat with four men and a boy, besides myself; that was all-sufficient.

Q. Where did you run to?

A. I ran to Havana, and to Key West, with the mails, and

returned again in a pilot boat of that size, with four men and a boy, some years ago.

Q. Was the Savannah in use as a pilot boat before that expedition?

A. Yes; that is what she was used for.

Q. Do you know where the Savannah was owned?

A. I believe she was owned in Charleston.

Q. How long have you known her?

A. Two or three years, as a pilot boat.

Q. Do you know her owners?

A. I know one of them.

Q. What was his name?

A. Mr. Lawson.

Q. Is he a citizen of the United States?

A. Yes, I believe so.

Cross-examined by Mr. Larocque.

Q. In speaking of your meeting with the Joseph, you spoke of a conversation that took place between Captain Baker and Captain Meyer, after Captain Meyer came on board the Savannah. Do you not recollect that before that, when Captain Meyer was still on the deck of the Joseph, Captain Baker having called him to come on board the Savannah, and bring his papers, he asked Captain Baker by what authority he called on him to do that?

A. I think this conversation occurred on board the Savannah.

Q. The way you stated was this: that Captain Baker, on board the Savannah, stated to Captain Meyer that he must

consider himself and crew prisoners, and his vessel a prize to the Confederate States?

A. Yes, sir.

Q. That was on board the Savannah?

A. It was.

Q. But do you not recollect that before that, when Captain Baker called on the Captain of the Joseph to come on board the Savannah, and bring his papers, Captain Meyer asked by what authority Captain Baker called on him to do that?

A. I do not bear that in mind. I cannot vouch for that. I do not exactly recollect those words, I think the proposition was only made when he was on board the Savannah, but probably it might have been made before.

Q. Did Captain Meyer bring his papers with him?

A. I do not know. I did not see them.

Q. You spoke of having met another vessel after that, and before you fell in with the Perry—I mean the Berkshire—you spoke of her as a British vessel?

A. Yes. We did not speak her.

Q. How did you ascertain the fact that she was a British vessel?

A. We could tell a British vessel by the cut of her sails.

Q. Was the Berkshire, so far as you observed, an armed or an unarmed vessel?

A. I think she was an unarmed vessel. I considered she had been at some of the Southern ports, and had been ordered off.

Q. She was a merchant vessel?

A. Yes.

Q. Which you, from your seamanlike knowledge, thought to be a British vessel?

A. Yes; and I think that the words, "Berkshire, of Liverpool," were on her stern.

Q. Did you read the name on the stern?

A. I think I did.

Q. You had fallen in with the Joseph, one unarmed vessel, and had made her a prize, and her crew prisoners?

A. Yes.

Q. You fell in with the Berkshire, another unarmed vessel, and passed under her stern and did not interfere with her. What was the reason of that difference?

A. We had no right to interfere with her.

Q. Why not?

A. She was not an enemy of the Confederate Government. The policy we were going on, as I understood it, was to take Northern vessels.

Q. Then you were not to seize all the vessels you met with?

A. No; we were not to trouble any others but those that were enemies to the Confederate Government. That was the orders from headquarters. The Captain showed no disposition to trouble any other vessels.

Q. When you were taken on board the Perry were you put in irons?

A. Yes.

Q. Where were those irons put on. Was it on board the Savannah, or after you were put on board the Perry?

A. When we got on board the Perry.

Q. How soon after you went on board the Perry were those irons put on?

A. As soon as our baggage was searched. We were put in the between-decks on board the Perry and irons put on us immediately after we were searched.

Q. Were you in irons when you were transferred from the Perry to the Minnesota?

A. No, sir.

Q. When were the irons taken off?

A. On board the Perry, when we were going into the boat to go on board the Minnesota.

Q. When you were on board the Minnesota were your irons put on again?

A. They were, at night.

Q. Was that the practice—taking them off in the day, and putting them on at night?

A. Yes; we were not ironed at all on that day on board the Minnesota.

Q. When you arrived in Hampton Roads,—you have described the place where the Minnesota lay, about half a mile from the Rip Raps?

A. Yes. (A chart was here handed to witness, and he marked on it the position of the Minnesota off Fortress Monroe.)

Q. As I understand it, you have marked the position of the anchorage of the Minnesota a little further up into the land than on a direct line between the Rip Raps and Fortress Monroe? *A.* Yes, sir.

Q. You were then taken on board the Harriet Lane, from the Minnesota?

A. Yes.

Q. Where did the Harriet Lane lie when you were taken on board of her?

A. She was further up into the Roads, about half a mile from the Minnesota, westward. (Witness marked the position of the Harriet Lane on the chart.)

Q. You are familiar with these Roads?

A. Yes, sir; for years.

Q. You know the town of Hampton?

A. Yes.

Q. And the college there?

A. Yes.

Q. How, with reference to the college at Hampton, did the Harriet Lane lie?

A. The college at Hampton appeared N.N.W., and at a distance of a mile and a quarter, or a mile and a half.

Q. How were you taken from the Minnesota on board the Harriet Lane?

A. The ship's crew took us in a boat.

Q. In one trip, or more trips?

A. We all went in one of the ship's boats.

Q. On what day was that?

A. I do not bear in mind exactly.

Q. Was the Harriet Lane ready to sail when you were taken on board of her?

A. Yes; she sailed in a few hours afterwards.

Q. She had already had steam up?

A. Yes; they were waiting for the commander, who was on shore.

Q. How long were you lying on board the Minnesota after your arrival there?

A. I think we were transferred from the Minnesota on Saturday, the 20th of June.

Q. How long had you been lying on board the Minnesota, in Hampton Roads?

A. Two or three days; I do not recollect exactly.

Q. You have been a seafaring man a good many years?

A. I have been about 34 years at it.

Q. In the capacity of master and mate?

A. Yes, sir.

Q. As pilot, also?

A. I have run pilot on all the coasts of America.

Q. How often had you been in Hampton Roads?

A. Many a time. I sailed a vessel in and out in the West India trade.

Q. How familiar are you with the localities about there?

A. I am so familiar that I could go in, either night or day, or into Norfolk.

Q. Do you know the ranges, bearings, distances, depth of water, and all about it?

A. Yes; and could always find my way along there.

Q. (*By a Juror.*) I understood you to say that the Savannah carried both the American flag and the Confederate flag?

A. Yes.

Q. And that the American flag was flying when you were bearing on the Joseph?

A. Yes.

Q. What was the object of sailing under that flag?

A. I presume our object was to let her know that we were coming; and, no doubt, the vessel heaved to for us. Suddenly enough we raised the Confederate flag.

Q. Then it was deception?

A. Of course; that was our business—that was as near as I understood it.

William Habeson called, and sworn. Examined by District Attorney Smith.

Q. You are the Deputy Collector of the port of Philadelphia? *A.* Yes, sir.

Q. Have you charge of the register of vessels there?

A. Yes.

Q. Did you take this certified copy of the register of the Joseph from the original book?

A. It is copied from the original book.

Mr. Evarts: It is a temporary register, dated 26th January, 1861, showing the building of the vessel, and the fact of her owners being citizens of the United States.

Q. Who was the master of the vessel then?

A. George H. Cables.

Q. Do you know who was the master afterwards?

A. Yes; I saw him afterwards. That man (pointing to Captain Meyer) is the man. He was endorsed as master after the issuing of this register.

Q. And you recollect this person being master of the vessel mentioned in that register?

A. I do, sir.

George Thomas called, and sworn. Examined by District Attorney Smith.

Q. Where do you reside?

A. Quincy, Massachusetts.

Q. What is your business?

A. Shipbuilder.

Q. Do you know the brig Joseph?

A. I have known her; I built her.

Q. Where did you build her?

A. At Rockland, Maine.

Q. Who did you build her for?

A. For Messrs. Crocket, Shaller, Ingraham, and Stephen N. Hatch—all of Rockland.

Q. Were they American citizens?

A. They were all American citizens.

Q. What was the tonnage of the vessel?

A. About 177 tons. She was a hermaphrodite brig.

Q. Look at this description in the register and say whether it was the vessel you built.

A. I have no doubt that this is the vessel.

George H. Cables called, and sworn. Examined by District Attorney Smith.

Q. Where do you reside?

A. Rockland, Maine.

Q. Look at the description of the brig Joseph, in this register, and see if you know her?

A. Yes, sir.

Q. You were formerly master of the vessel?

A. Yes, sir.

Q. Who was the master that succeeded you?

A. I put Captain Meyer in charge of her.

Q. You recognize Mr. Meyer here?

A. Yes, sir.

Q. Did you own any part of that vessel?

A. I bought a part of it, and gave it to my wife.

Q. Is your wife an American-born woman?

A. She is.

Q. Where does she reside?

A. In Rockland.

Q. Do you know any others of the part-owners of her?

A. Yes; my brother and myself bought a three-eighth interest.

Q. Where does your brother reside?

A. In Rockland.

Q. Is he an American-born citizen?

A. Yes.

Q. Are you an American citizen?

A. Yes.

Q. You spoke of some other owner?

A. Yes; Messrs. Hatch and Shaler.

Q. Are they American citizens?

A. Yes.

Q. Did you know all the owners?

A. Yes.

Q. Were they all American citizens?

A. Yes.

Q. When did you put Meyer in charge of the vessel?

A. On the 26th or 27th of April last.

Q. Where?

A. In Philadelphia.

Q. Where did you sail from?

A. From Cardenas, in Cuba, on a round charter which I made at Cardenas myself with J. L. Morales & Co., consigned to S. H. Walsh & Co.

Q. The ownership remained the same?

A. Just the same.

Q. Was there any change up to the time of her capture?

A. No, sir.

Thies N. Meyer, examined by District Attorney Smith.

Q. You were Captain of the brig Joseph at the time of her capture?

A. I was.

Q. What American port had you sailed from?

A. Philadelphia.

Q. Where did you go to?

A. Cardenas, in Cuba.

Q. What port did you sail for from Cardenas?

A. Back to Philadelphia.

Q. What cargo had you?

A. Sugar.

Q. By whom was it owned?

A. By J. M. Morales & Co., of Cardenas.

Q. When did you leave the port of Cardenas?

A. 28th May, 1861.

Q. And you were captured by the Savannah on the 3d June?

A. Yes.

Q. State the particulars of the capture by the Savannah of the brig Joseph from the time she first hove in sight?

A. Mr. Bridges, my mate, called me some time between 6 and 7 o'clock in the morning, and told me there was a suspicious looking vessel in sight, and he wished me to look at her. I went on deck and asked him how long he had seen her, he told me he

had seen her ever since day-light. When I took the spy-glass and looked at her I found that she was a style of vessel that we do not generally see so far off as that. I hauled my vessel to E.N.E., and when I found that she was gaining on me I hauled her E. by N. and so until she ran E. About 8 o'clock she came near enough for me to see a rather nasty looking thing amid-ships, so that I mistrusted something; but when I saw the American flag hanging on her main rigging, on her port side, I felt a little easier—still, I rather mistrusted something, and kept on till I found I could not get away at all. When she got within half a gun shot of me I heaved my vessel to, hoping the other might be an American vessel.

Q. Had she any gun on board?

A. I saw a big gun amid-ships, on a pivot.

Q. How far on was she when you saw the gun?

A. About a mile and a half or two miles; I could see it with the spy-glass very plainly.

Q. Can you give us the size of the gun?

A. Not exactly; I believe it was an old eighteen pound cannonade.

Q. How was it mounted?

A. On a kind of sliding gutter, which goes on an iron pivot: it was on a round platform on deck, so that it could be hauled round and round.

Q. So that it could be pointed in any direction?

A. Yes, in any direction. After she came up alongside of me,

Captain Baker asked me where I was from, and where bound, and ordered me with my boat and papers on board his vessel. I asked him by what authority he ordered me on board, and he said, by authority of the Confederate States. I lowered my boat and went on board with two of my men. When I got alongside, Captain Baker helped me over the bulwarks, or fence, and said he was sorry to take my vessel, but he had to retaliate, because the North had been making war upon them. I told him that that was all right, but that he ought to do it under his own flag. He then hoisted his own flag, and ordered a boat's crew to go on board the brig. Some of them afterwards returned, leaving six on board the brig.

Q. Did Captain Baker take your papers?

A. Yes.

Q. Do you recognize Captain Baker in court?

A. Yes. As soon as they secured my crew they hauled the brig on the other tack, and stood into the westward, with the privateer in company. Captain Baker desired me to ask my mate to take the sun, as he had a chronometer on board, and the privateer had not. At 3 o'clock the privateer stood back to find out the longitude; while so doing she got astern of the brig, and about that time the brig Perry hove in sight, steering southward and eastward. When they saw the brig Perry they hauled the privateer more on the wind, because she would go a point or two nearer to the wind than the brig Joseph, so as to cut off the Perry if they could. They went aloft a good deal with opera glasses, to

find out what she was, and they made her out to be a merchant vessel, as they thought. Then they saw the Perry's quarter boats, and rather mistrusted her. They backed ship and stood the same as the Perry. The Perry then set gallant stern-sail, and kept her more free, because she got the weather-gauge of the privateer.

Q. At the time of the capture of the Joseph by the Savannah did you observe all the crew, and in what attitude they were on deck?

A. I saw them working around the gun and hauling at it. Whether it was loaded or not, I could not say.

Q. Were any of the men armed?

A. None at that time that I know of; but after I went on board I saw them armed with a kind of cutlass, and old-fashioned boarding-pistols; and they had muskets with bayonets on.

Q. At the time you left your vessel for the Savannah, in what attitude were the men on board the Savannah?

A. They were all around on deck. Perhaps half of them were armed.

Q. How was the gun pointed?

A. The gun was pointing toward the brig.

Q. Who were about the gun?

A. Before I went on board I saw that a man was stationed beside the gun; I could not say which of them it was.

Q. What crew had you?

A. I had four men, a cook, and mate.

Q. Were they armed?

A. No, sir.

Q. Were you armed?

A. I had one old musket that would go off at half-cock.

Q. Was there any gun on board your vessel?

A. None except that.

Q. How many men did you see on the deck of the Savannah?

A. Some 16, or 18, or 20.

Q. Were you transferred to the Perry from the Savannah?

A. Yes.

Q. And from the Perry to the Minnesota?

A. Yes.

Q. And from the Minnesota to the Harriet Lane?

A. No; to the Savannah. I came to New York in the Savannah.

Q. Then the Savannah sailed to New York before the Harriet Lane did?

A. Yes, sir.

Q. Where were you born?

A. In the Duchy of Holstein, under the flag of Denmark.

Q. You have been naturalized?

A. Yes.

Q. In what Court?

A. In the Court of Common Pleas, New York.

Q. When did you come to this country?

A. In the winter of '47.

Q. Did you hail from here ever since?

A. I hailed from almost all over the States. I never had a home

until lately. I have hailed from here about a year. Before that, wherever my chest was was my home.

Q. You have resided in the United States ever since you were naturalized?

A. Yes, sir; I have never been out of it except on voyages.

Q. You have continued to be a citizen of the United States since you were naturalized?

A. Yes.

Q. And to reside in the United States?

A. Yes.

Q. Do you recollect the names of your crew?

A. No, sir; none except the mate; his name was Bridges.

Q. Is he here?

A. Yes.

Q. When the Joseph was seized by the Savannah, what was done with the Joseph?

A. She was taken a prize, a crew of six was put on board of her, and they started with her to westward.

Q. What became of the rest of the men of the Joseph besides yourself?

A. They were carried on with the Joseph; I continued on the Savannah.

Q. When did you first observe, on board the Savannah, that the American flag was flying?

A. When she was within about a mile and a half off.

Q. At what time, in reference to her distance from you, did

she run up the Confederate flag?

A. The Confederate flag was not run up until after I had asked Captain Baker by what authority he ordered me to go on board; then the Confederate flag was run up; that was just before I went on board.

Cross-examined by Mr. Larocque.

Q. Be good enough to spell your name.

A. Thies N. Meyer.

Q. Was there any flag hoisted on board the Savannah at the time she was captured by the Perry, or immediately preceding that?

A. They were trying to hoist the Stars and Stripes up, but it got foul and they could not get it up, and they had to haul it down again.

Q. Then she had no flag flying at the time?

A. No, sir.

The District Attorney here put in evidence the certified copy of the record of naturalization of Thies N. Meyer, captain of the Joseph, dated 28th January, 1856.

Horace W. Bridges, examined by District Attorney Smith.

Q. You were mate of the Joseph when she was captured by the Savannah?

A. Yes.

Q. Do you know the names of the others of the crew beside yourself and the captain?

A. I do not know all of them.

Q. State those you know?

A. The cook's name is Nash, and there was another man named Harry Quincy; that is all I know.

Q. Were they citizens of the United States?

A. I think they were both.

Q. Are you a citizen of the United States?

A. Yes; I was born in the State of Maine.

Q. You have heard the statement of Captain Meyer as to the seizure of the vessel?

A. Yes.

Q. You were on board the Joseph after she parted company with the Savannah and sailed for South Carolina?

A. Yes, sir.

Q. Under whose direction did she sail?

A. By the direction of the prize-master.

Q. With a prize crew from the Savannah?

A. Yes.

Q. Do you recollect the name of the prize-master?

A. Evans.

Q. How many men did the crew consist of?

A. Six, with the prize-master.

Q. What did they do with the vessel?

A. Took her into Georgetown.

Q. What was done with you and the others of the crew?

A. We were taken to jail at Georgetown.

Q. What was done with the vessel?

A. I believe she was sold, from what I saw in the papers and what I was told.

Q. Where were you taken from Georgetown?

A. To Charleston.

Q. What was done with you there?

A. We were put in jail again.

Q. How long were you kept in jail in Georgetown?

A. About 2 months and 20 days.

Q. How long were you kept in jail in Charleston?

A. Three days.

Cross-examined by Mr. Larocque.

Q. You said that, while you were held as a prisoner at Georgetown, you saw something in reference to the sale of the Joseph in the papers?

A. Yes.

Q. What was the purport of it?

A. She was advertised for sale.

Q. Under legal process?

A. I do not know about that. I was also told of it by one of the prize crew that took us in.

Q. You saw in the newspapers an advertisement of the sale?

A. Yes.

Q. Was that of a sale by order of a Court?

A. It was a sale by order of the Sheriff or Marshal.

Q. As a prize?

Objected to by District Attorney Smith, for two reasons:

First—That it was a mere newspaper account; and,

Secondly—That the newspaper was not produced.

After argument, the Court decided that there was no foundation laid for this hearsay evidence.

Q. Did the advertisement state by whose authority the sale was to take place?

A. I do not recollect anything about that.

Q. Do you recollect the name of a judge as connected with it?

A. No, sir. There was no judge connected with the sale.

Q. Do you recollect the name of Judge Magrath in connection with it?

A. No, sir; I recollect his name in connection with some prize cases, but not in connection with the sale of the Joseph.

Q. Since your arrival at New York, you have been examined partially by the District Attorney, and have made a statement to him?

A. Yes.

Q. Did you not state on that examination that while you were in confinement the vessel was confiscated by Judge Magrath, and sold at Georgetown?

A. No, sir; I do not think I did.

Q. You were released at Charleston, after a confinement of three days?

A. Yes.

Q. How did you get out?

A. The Marshal let us out.

Q. While you were in confinement at Georgetown or Charleston was your examination taken in any proceeding against the bark Joseph, or in relation to her?

A. Yes, sir. In Georgetown.

Q. By whom was that examination taken?

Mr. Evarts suggested that there was a certain method of proving a judicial inquiry.

Judge Nelson: They may prove the fact of the examination.

Q. Before whom were you examined?

A. Before a man who came from Charleston.

Q. Did he take your examination in writing?

A. Yes, sir.

Q. Did you learn what his name was?

A. I think his name was Gilchrist.

Q. Were you sworn, as a witness?

A. Yes.

Q. What proceeding was that, as you were given to understand, and what was the object of the examination?

A. The object of it was to find out what vessel she was, what was her nationality, and who owned the cargo belonging to her.

Q. And you gave your testimony on these subjects.

A. Yes.

Q. Was it in written questions put to you?

A. I think so.

Q. And you signed your examination?

A. Yes.

Q. And what came of it afterwards?

A. I do not know.

Q. Was it taken away by Mr. Gilchrist?

A. I expect so.

Q. Was there any other of the crew besides yourself examined? *A.* Yes; all of them.

Q. On the same subject?

A. I expect so.

Q. Were you present during the examination of them all?

A. No; only at my own.

Q. What newspaper was it that you saw that advertisement in?

A. I think in the Charleston Courier.

Q. Do you recollect its date?

A. No, sir.

Q. What had become of the vessel when you went to Charleston?

A. She was lying in Georgetown.

Q. Do you know in whose possession, or under whose charge, she was?

A. I do not.

Q. Was she in Georgetown, in the hands of the Marshal, to your knowledge?

A. No, sir; not to my knowledge. I was in prison at the time.

Commodore Silas H. Stringham, examined by District Attorney Smith.

Q. You are in the United States Navy?

A. I am.

Q. The Minnesota was the flag ship of the Atlantic Blockading Squadron, off Charleston?

A. Yes, sir. I was the commanding officer.

Q. The Minnesota took the prisoners off the Perry?

A. Yes; on the 5th of June, in the afternoon.

Q. State precisely where the transfer from the Perry to the Minnesota was made?

A. I discovered, about mid-day, a vessel close in to Charleston. I stood off to make out what she was. A short time afterwards we discovered it was the Perry, and were surprised to find her there, as she had been ordered, some time previously, to Fernandina, Fla. She hailed us, and informed us she had captured a piratical vessel. The vessel was half a mile astern. Captain Parrott, of the Perry, came and made to me a report of what had taken place. I ordered him to send the prisoners on board, and sent a few men on board the Savannah to take charge of her during the night. The vessels were then anchored. The next morning I made arrangements to put a prize crew on board the Savannah, and send her to New York, and I directed the Captain of the Joseph to take passage in her. I took the prisoners from the Perry, and directed the Perry to proceed on her cruise, according to her previous orders. I then got the Minnesota under weigh, and took the privateer in tow, and brought her close in to Charleston harbor, within 3 miles, so as to let them see that their vessel was captured. Some slaves in a boat told me next day that they had

seen and recognized the vessel.

Mr. Brady: The question you were called upon to answer is, as to the place where the prisoners were transferred from the Perry to the Minnesota.

A. The transfer was made about 10 miles from Charleston Harbor, out at sea. It was fully 10 miles off.

Q. State the design of transferring the prisoners to the Minnesota?

Objected to by Mr. Larocque.

ARGUMENT ON THE JURISDICTION

The District Attorney, Mr. Smith, stated that he would prove that every thing done from that time onward was done in pursuance of a design then conceived of sending the prisoners, to the port of New York.

Mr. Larocque contended that the naked question of jurisdiction, or want of jurisdiction, could not be affected by showing that the prisoners were taken on board a particular vessel, with or without a particular design. All that affected that question was, the place where the prisoners were first taken to after they were captured. The only question their honors could consider was, whether, after their apprehension, the prisoners were or were not brought within the District of Virginia, so as to give the Court of Virginia jurisdiction, before they were brought to New York. The fact that Commodore Stringham did, or did

not, entertain in his own mind a design to bring the prisoners to New York, was of no relevancy whatever. Their objection was based on the broad ground, that the statute had fixed the only District that was to have jurisdiction of these criminals, namely, the District within which they are first brought. If they were first brought within the District of Virginia, the design which the Commodore might have entertained made no manner of difference, and the fact could not be got rid of by any evidence to show that the design was not to put themselves in that dilemma.

Mr. James T. Brady submitted an argument on the same side. He said that the true test of the correctness of the objection could be ascertained thus: If a man were arrested anywhere on the high seas, supposed to be amenable to the Act of 1790, and was brought into a port of the United States, within a Judicial District of the United States, could he not demand, under the Act of Congress, to be tried in that District? Could the commander of the vessel supersede that Act of Congress, and say he would take the prisoner into the port of New York, or any other port? What answer would that be to a writ of *habeas corpus* sued out by either of these men confined on that ship, within that Judicial District? If any such rule as that could prevail, the Act of Congress would become perfectly nugatory and subservient to the will of the individual who apprehended prisoners on the high seas. If he had started on a cruise round the world, he could carry them with him, and, after returning to the United States, could take them into every District till he came to the one that suited him.

Mr. Brady, therefore, claimed that it was wholly immaterial what might have been the design of Commodore Stringham; and that the question of jurisdiction was determined by the physical fact, as to what was the first Judicial District into which these men were brought after being apprehended on the high seas.

Mr. Evarts considered that this was a question rather of regularity of discussion, than a question to be now absolutely determined by the Court. He supposed that they were entitled to lay before the Court all the attendant facts governing the question of, whether the introduction of these criminals from the point of seizure on the high seas was, within the legal sense, made into the District of New York, or into that of Virginia —whether the physical introduction of prisoners, in the course of a voyage toward the port of New York, into the roads at Hampton, is, within the meaning of the law, a bringing them into the District of Virginia. If the substantial qualification of the course of the voyage from the point of seizure to the place of actual debarcation was to affect the act, this was the time for the prosecution to produce that piece of evidence; and he supposed that that important inquiry should be reserved till the termination of the case, when the proof would be all before the Court. He suggested that no large ship could enter the port of New York without physically passing through what might be called the District of New Jersey; and argued that, in no sense of the act, and in no just sense, should these prisoners be tried in New Jersey, because the ship carrying them had passed through

her waters.

Mr. Larocque, for the defendants, contended that the arrest of the parties as criminals was at the moment when they were taken from on board the Savannah, placed on board the Perry, and put in irons. The learned gentleman (Mr. Evarts) had said that it would be impossible to bring them within the District of New York without first bringing them within the District of New Jersey; but that objection was met by the fact that, over the waters of the bay of New York, the States of New Jersey and New York exercised concurrent jurisdiction, and therefore they came within the District of New York, to all intents and purposes. He proposed to refer to the authorities on which the point rested.

In this case, the place where the arrest was made was the Perry, a United States cruiser, which, in one sense, was equivalent to a part of the national soil; and he held that the idea under this statute was, that their apprehension and confinement from the moment they were arrested as criminals was complete, without being required to be under legal process, it being sufficient that they were arrested by the constituted authorities of the United States. The moment they were brought within a Judicial District of the United States, that moment the jurisdiction attached; and no jurisdiction could attach anywhere else. This was an offence committed on the high seas. All the Districts of the country could not have concurrent jurisdiction over it; and this very case was an exemplification of the injustice that would result from permitting an officer, in times of high political excitement, to

have the privilege, at his mere pleasure or caprice, of selecting the place of jurisdiction, and the place of trial. Suppose these prisoners, instead of being landed at the first place where the vessel touched, could have been taken up the Mississippi river in a boat, and up the Ohio river in another boat, and landed within the District of Ohio, for the purpose of being tried there, —would not their honors' sense of justice and propriety revolt at that? The same injustice would result in a different degree, and under different circumstances, if, after taking these prisoners to Virginia and ascertaining the difficulties in the way of their being tried there, the officer could change their course and bring them into the port of New York. The prisoners were entitled to the benefit of being tried in the District where they were first taken, in preference to any other District; and justice would be more surely done by holding a strict rule on that subject, by requiring that the facts should control, and that no mere intention on the part of the captors should be allowed to govern.

One of the cases on this subject which had produced a misapprehension of the question was that of the United States *vs.* Thompson, 1st Sumner's Reports, which was an indictment for endeavoring to create a revolt, under the Act of 1790. It was in the Massachusetts District. The facts in the case were these:—"The vessel arrived at Stonington, Connecticut, and from thence sailed to New Bedford, Massachusetts, where the defendant was arrested, and committed for trial. It did not appear that he had been in confinement before. Judge Story

ruled on the question of jurisdiction. He said: 'The language of the Crimes Act of 1790 (Cap. 36, sec. 8) is, that the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the District in which the offender is apprehended, or into which he shall first be brought. The provision is in the alternative, and therefore the crime is cognizable in either District. And there is wisdom in the provision; for otherwise, if a ship should, by stress of weather, be driven to take shelter temporarily in any port of the Union, however distant from her home port, the master and all the crew, as well as the ship, might be detained, and the trial had far from the port to which she belonged, or to which she was destined. And if the offender should escape into another District, or voluntarily depart from that into which he was first brought, he would, upon an arrest, be necessarily required to be sent back for trial to the latter. And now there is no particular propriety, as to crimes committed on the high seas, in assigning one District rather than another for the place of trial, except what arises from general convenience; and the present alternative provision is well adapted to this purpose.'"

This was noticed, in the first place, in the case of the United States *vs.* Edward C. Townsend, of which he (Mr. Larocque) held in his hand a copy of the exemplication of the record. Townsend was charged, in the District Court of Massachusetts, with piracy, in having been engaged in the slave trade, in 1858. He was captured on board the brig Echo, by a United States

cruiser. That vessel first made the port of Key West, putting in there for water; and thence proceeded to Massachusetts, where the prisoner was landed, taken into custody under a warrant of the Commissioner, and the matter brought before the Grand Jury, for the purpose of having an indictment found against him. In that case Judge Sprague charged the Grand Jury that, under the law, the prisoner could only be tried in Key West, because that was the first port which the vessel had made after he had been captured and confined as a prisoner. Under that instruction the Grand Jury refused to find a bill of indictment; and thereupon the District Attorney (Mr. Woodbury) applied to the court for a warrant of removal, to remove him to Key West, for trial; and also to have the witnesses recognized to appear at Key West, to testify on the trial. The counsel read a note from Mr. Woodbury on the subject, showing that Mr. Justice Clifford, of the Supreme Court of the United States, sat and concurred with Judge Sprague in granting the warrant of removal. He referred also to another case, decided by Judge Sprague—the United States *vs.* Bird—volume of Judge Sprague's Decisions, page 299: "This indictment alleged an offence to have been committed on the high seas, and that the prisoner was first brought into the District of Massachusetts. Questions of jurisdiction arose upon the evidence. The counsel for the prisoner contended that the offence, if any, was committed on the Mississippi river, and within the State of Louisiana; and, further, that if committed beyond the limits of that State, the prisoner was not

first brought into this District. Sprague, J., said that, if an offence be committed within the United States, it must be tried in the State and District within which it was committed. Constitution Amendment 6, If the offence be committed without the limits of the United States, on the high seas, or in a foreign port, the trial must be had in the District 'where the offender is apprehended, or into which he may be first brought.'—Stat. 1790, cap. 9, sec. 8; Stat. 1825, cap. 65, sec. 14. By being brought within a District, is not meant merely being conveyed thither by the ship on which the offender may first arrive; but the statute contemplates two classes of cases: one, in which the offender shall have been apprehended without the limits of the United States, and brought in custody into some Judicial District; the other, in which he shall not have been so apprehended and brought, but shall have been first taken into legal custody, after his arrival within some District of the United States, and provides in what District each of these classes shall be tried. It does not contemplate that the Government shall have the election in which of two Districts to proceed to trial. It is true that, in United States *vs.* Thompson, 1 Sumner, 168, Judge Story seems to think that a prisoner might be tried either in the District where he is apprehended, or in the District into which he is first brought. But the objection in that case did not call for any careful consideration of the meaning of the word 'brought,' as used in the statute; nor does he discuss the question, whether the accused, having come in his own ship, satisfies that requisition. In that case the party had not been apprehended abroad; and the

decision was clearly right, as the first arrest was in the District of Massachusetts. The statute of 1819, cap. 101, sec. 1 (3 U.S. Statutes at Large, 532), for the suppression of the slave trade, is an example of a case in which an offender may be apprehended without the limits of the United States, and sent to the United States for trial. Ex parte Bollman *vs.* Swartwout, 4 Cranch, 136."

Their honors would observe that in both the cases cited, correcting the manifest misapprehension of Judge Story, the point was distinctly held that the question of jurisdiction was controlled exclusively by the fact as to what District the prisoner was first brought into after his arrest on the high seas, out of the United States, for a crime committed on the high seas.

Judge Nelson stated that, as it was now late (half-past 5 P. M.), the question might go over till morning.

The counsel on each side assenting, the Jury were allowed to separate, with a caution from the Court against conversing in respect to the case.

Adjourned to Thursday, at 11 A.M.

SECOND DAY

Thursday, Oct. 24, 1861.

The Court met at 11 o'clock A.M.

Judge Nelson, in deciding the question raised yesterday, said:

So far as regards the question heretofore under consideration of Judge Sprague, we do not think that at present involved in the case. We will confine ourselves to the decision of the admissibility of the question as it was put by the District Attorney and objected to, as respects the purpose with which the Minnesota, with the prisoners, was sent to Hampton Roads. We think that the fact of their being sent by the commanding officer of that place, with the prisoners, to Hampton Roads, is material and necessary; and, in order to appreciate fully the fact itself, the purpose is a part of the *res gestæ* that characterizes the fact. What effect it may have upon the more general question, involving the jurisdiction of the Court, is not material or necessary now to consider. We think the question is proper.

Counsel for defendants took exception to the ruling of the Court.

Commodore Stringham recalled. Direct examination resumed by Mr. Smith.

Q. What was your object in transferring the prisoners from the Perry to the Minnesota?

A. Sending them to a Northern port. The port of New York was the port I had in my mind. To send them by the first ship from the station, as soon as possible, to a Northern port, for trial. I could not send them to a Southern port for trial. The only way I could do so would be by guns. I could get no landing in those places otherwise; and I could get no judge or jury to give them a trial.

Mr. Larocque asked if, conceding the propriety of the inquiry, the statement of the witness was competent, viz.: that he had a port in his mind.

The Court: No; the question was not put in the shape I supposed. The question should have been—for what purpose or object did he send the prisoners in the Minnesota to Hampton Roads? That is the point in the case—the intent with which the vessel was sent to Hampton Roads?

A. I sent them there with the intention of sending them to a Northern port, for trial. The Harriet Lane being the first vessel that left, after my arrival there, they were sent in the Harriet Lane to the Northern port of New York.

Q. Why did you not take them in the Minnesota directly to New York, instead of taking them to Hampton Roads?

A. My station was at Hampton Roads, and I went there to arrange the squadron that might be there, and to get a supply of fuel for the ship. I do not think we had enough to go to New York, if we wished to go there. I had supplied vessels on the coast below, and had exhausted pretty nearly all the coal from

the Minnesota when we arrived at Hampton Roads.

Q. What directions did you give to the officers of the Harriet Lane?

A. I gave no directions to the officers of the Harriet Lane. I gave directions to the commander of the Minnesota. I left on the day previous, I think, to their being transferred to the Harriet Lane,—giving directions that, as soon as she came down from Newport News, to send her to New York, with the prisoners. I had been called to Washington, by the Secretary of the Navy, the day before she sailed.

Q. Are you aware of any facts which rendered it impossible to land the prisoners in the Virginia District, or on the Virginia shore?

A. It was impossible to land without force of arms, and taking possession of any port. We *could* land them there, but not for trial, certainly. The Harriet Lane had been fired into but a short time previous; and that was one cause of sending her to New York.

Q. Fired into from the Virginia shore?

A. Yes, sir; from Field Point; I should judge, about 8 miles from Norfolk port, on the southern shore, nearly opposite Newport News. I was not there, but it was reported to me. She was fired into, and she was ordered to New York to change her armament.

Q. Was that fort in the way, proceeding to Norfolk?

A. Not on the direct way to Hampton Roads, but a little point

on the left.

Q. Would a vessel, going the usual way to Norfolk, be in range of the guns that were fired at the Harriet Lane?

A. Not of these; but she would be in the range of four or five forts that it would be necessary to pass in order to land the prisoners at Norfolk.

Q. What was the nearest port to where the Minnesota went with the prisoners?

A. The nearest port of entry was Norfolk. Hampton Roads was a little higher up. We were not anchored exactly at the Roads, but off Old Point, which is not considered Hampton Roads.

[*Map produced.*] I have marked the position of the Minnesota on this map, in blue ink. [Exhibits the position to the Court.]

Q. State the position of the Minnesota?

A. That is as near as I can put it—between the Rip Raps and Fortress Monroe—a little outside of the Rip Raps.

Q. In what jurisdiction is the Fort?

A. In the United States.

(Objected to, as matter of law.)

Q. At what distance were you from Fortress Monroe?

A. About three-quarters of a mile, and nearly the same from the Rip Raps.

Q. What distance from Norfolk?

A. I think 14 miles, as near as I can judge; 12 or 14.

Q. Had you any instructions from the Government, in respect to any prisoners that might be arrested on the high seas, as to the

place they were to be taken to?

A. Not previous to my arriving at Hampton Roads. After that, I had. Those instructions were in writing.

Q. You had no particular or general instructions previous to that?

A. No, sir; it was discretionary with me, previous to that, where to send the prisoners I had.

Q. When vessels are sent from one place to another, state whether it is not frequently the case that they take shelter in roadsteads?

(Objected to. Excluded.)

Q. Where did your duties, as flag-officer of the squadron, require you to be with your ship, the Minnesota?

(Objected to. Excluded.)

Q. Where do Hampton Roads commence on this map, and where end?

A. In my experience, I have always considered it higher up than where we were anchored. This is anchoring off Fortress Monroe, when anchoring there. When they go a little higher up, they go to Hampton Roads; and, before the war, small vessels anchored up in Newport News, in a gale of wind.

Q. Where did the Minnesota anchor, in respect to Hampton Roads?

A. We anchored outside, sir. I can only say this from the pilot. When commanding the Ohio, he asked me whether I wished to anchor inside the Roads. Baltimore pilots have permission to

go into Hampton Roads, and no farther. That is considered as neutral ground for all vessels.

By the Court:

Q. What is the width of the entrance to the Hampton Roads?

A. I should judge about 3-1/2 miles, or 3-1/4, from Old Point over to Sewall's Point. I have not measured it accurately. It is from 3 to 4 miles.

By Mr. Smith:

Q. Was the Minnesota brought inside or outside of a line drawn from Old Point to the Rip Raps?

A. A little outside of the line, sir.

By a Juror:

Q. Would a person be subject to any port-charges where the Minnesota lay?

A. No, sir.

Defendants' counsel objected to the question and answer.

The Court:

Q. What do you mean by port dues?

A. I mean they do not have to enter into the custom-house to pay port-charges. It is not a port of entry, that compels them to carry their papers. The only port-charges I know of are the pilot-charges, in and out.

(The Court ruled it out as immaterial.)

Cross-examined by Mr. Brady.

Q. I want, for the purpose of preventing any misapprehension, to ask if there is any line that you know of, which you could

draw upon that map, distinguishing the place at which Hampton Roads begins?

A. Nothing only among sea-faring men;—just as the lower bay of New York, which is considered to be down below the Southwest Spit. When anchored between this and that, it is called off a particular place, as Coney Island, &c. So, there, after you pass up from Fortress Monroe, it is called Hampton Roads.

Q. Is there any specific point you can draw a line from on the map that distinctly indicates where Hampton Roads begin? *A.* I cannot, sir.

Q. Designate where the Harriet Lane was?

A. I cannot say, sir. She was at Newport News when I left, and came down the next day, I believe, and took the prisoners on board and proceeded to New York.

Q. The Minnesota was anchored?

A. Yes, sir, but not moored; with a single anchor.

Q. How much cable was out?

A. From 65 to 70 fathoms, I think. I generally order 65 fathoms; but the captain gave her 5 fathoms more.

Q. Would she swing far enough to affect the question whether she was in or outside of Hampton Roads, as you understood it?

A. No, sir.

Q. Had you often been there before?

A. I had, sir, often. I was there 51 years ago. I started there.

Q. Did you ever have occasion, for any practical purposes, to locate where Hampton Roads began?

A. Yes, sir; several times I have anchored there with ships under my command, and the pilots have said, "Will you go up into the Roads?" and I said, "Yes;" and we never anchored within two or three miles of where we lay with the Minnesota.

Q. But it was not your object to get at any particular line which separated Hampton Roads?

A. No; we considered it a better anchorage. The only importance was a better anchorage.

Q. You had no instructions of any kind in regard to the prisoners before you left for Washington?

A. I would say I had not, before I arrived at Hampton Roads, or at Old Point.

Q. Did you receive any between the time of your arrival and your departure for Washington?

A. I cannot say, but I think not.

Q. The only instructions you gave were that, when the Harriet Lane came up, the prisoners should be removed, and sent to New York?

A. I gave orders that they should be sent to New York and delivered to the Marshal.

Q. There would be no difficulty to transfer prisoners to Fortress Monroe?

A. No, sir, no difficulty.

Q. Could they not have been taken to Hampton?

A. I think not. Our troops had abandoned Hampton and moved in, I think. There was nothing there to land at Hampton.

We may have had possession at that time.

Q. Do you know of any obstacle whatever to these men having been taken ashore at Old Point Comfort and carried to Hampton?

A. I went up twice to Washington, with Colonel Baker, when he abandoned Hampton; but I think at the time the prisoners were on board we had the occupation of Hampton by our troops. My impression is, we occupied it partly with our troops at that time. I went to Washington at another time, when the troops had abandoned Hampton, and Colonel Baker took his soldiers up in the same boat.

Q. A college has been described on shore, and the locality described. Was it not occupied as an hospital?

A. Yes, sir, at the time the Minnesota arrived. It is not in Hampton.

Q. When the Minnesota arrived with the prisoners was not that building in possession of our Government?

A. It was, sir, I believe. I was not in it.

By Mr. Evarts: Is not the hospital at Old Point?

A. Near Old Point.

By Mr. Brady: Designate on the chart where it is?

A. I have done so,—the square mark, on the shore, in the rear of the fort, on the Virginia shore.

By the Court: How much of a town is Hampton?

A. There is none of it left now. I suppose it was a town of 4,000 or 5,000 inhabitants.

Q. Was it not formerly a port of entry?

A. No, sir, I believe not; not that I know of. That was 4 or 5 miles off from the vessel.

By Mr. Brady: How far was Hampton from Fortress Monroe?

A. I should judge 3 miles.

Q. I ask again, before you left the Minnesota, after the arrival of the prisoners, had you any instructions from Washington in regard to these prisoners?

A. I cannot bring to my mind whether I had any or not. I had instructions, subsequent to my arrival, about all prisoners, and that was the reason why I came here. There was some question as to why I came with 700 prisoners; but I had instructions to bring all prisoners taken, and turn them over to Colonel Burke, of New York.

Q. After you arrived at Washington did you receive any instructions in regard to these prisoners?

A. I do not know that I did. I had some discussion in Washington.

Q. Did you communicate from Washington, in any way, to Fortress Monroe, or the Minnesota, in regard to the prisoners?

A. No, sir.

Q. They went forward under the directions you gave before leaving to go to Washington?

A. They did, sir; I gave the instructions. I did not know whether the Harriet Lane would be ready. She was waiting until the vessel arrived to relieve her from the station.

Q. Was General Butler at Fortress Monroe at the time of the

arrival of the prisoners?

A. He was, sir.

Q. Did you confer with him about it?

A. No, sir.

Q. Neither then nor at Washington?

A. No, sir.

Q. Was there any conversation between you and him in regard to that?

A. I do not think there was until after my return and the prisoners had gone to New York.

Re-direct.

Q. How large a space is occupied by the hospital to which you have referred?

A. I cannot give the number of feet, but I think about 150 feet square. I never was in it but once, when I passed in for a moment, and right out of the hall.

David C. Constable called by the prosecution and sworn.

Examined by Mr. Smith.

Q. You are a Lieutenant in the United States Navy?

A. Not now; I am First Lieutenant of the *Harriet Lane*. We were then serving under the Navy; I am now in a revenue cutter.

Q. Were you on board the Harriet Lane when she received the prisoners from the Minnesota?

A. I was, sir.

Q. Who did you receive your orders from on the subject?

A. Captain Van Brunt, of the Minnesota.

Q. Was that a verbal order?

A. No; a written one, sir.

Q. Was it an order to bring the prisoners to New York?

A. To proceed with the prisoners to New York, and deliver them to the civil authorities, I think.

Q. Where was the Harriet Lane, in respect to the Rip Raps and fort at Old Point Comfort, when the prisoners were taken on board from the Minnesota?

A. We were about half a mile, I should judge, from the Minnesota; a little nearer in shore.

Q. Where had the Harriet Lane come from?

A. From Newport News.

Q. Did she, or not, come from Newport News in pursuance of the object to go to New York?

A. Yes, sir; although at the time we had received no orders in regard to any prisoners. We were coming on for a change of armament and for repairs.

Q. The Harriet Lane had been fired into?

A. She had, sir.

Q. Where was she when fired into?

(Objected to. Offered to show the impossibility of landing. Ruled out as immaterial.)

Q. How was the transfer made from the Minnesota to the Harriet Lane?

A. By boats.

Q. Show on this map where the Harriet Lane was when the

transfer was made of the prisoners from the Minnesota, and also where the Minnesota lay?

[Witness marked the place on map.]

Q. State the relative position of the vessels as you have marked it?

A. I should judge we were about a mile from Old Point, in about eleven fathoms of water, and probably about a mile from the Rip Raps. I do not remember exactly.

Q. The Harriet Lane was about half a mile further up?

A. Yes, a little west of the Minnesota, but farther in shore.

Q. What is your understanding in respect to where Hampton Roads commence, in reference to the position of these vessels?

A. I had always supposed it was inside of Old Point and the Rip Raps, after passing through them,—taking Old Point as the Northern extremity, and out to Sewall's Point.

Q. How in respect to where the Harriet Lane lay?

A. I consider she was off Old Point, and not, properly speaking, in Hampton Roads.

Q. The Minnesota was still further out?

A. Yes, sir, a very little.

Q. You brought the prisoners to New York in the Harriet Lane and delivered them to the United States Marshal at New York?

A. Yes, sir.

Q. You delivered them from your vessel to the United States Marshal?

A. Yes, sir; the United States Marshal came alongside our ship,

while in the Navy Yard, in a tug, and they were delivered to him.

Q. Do you remember the day they arrived at New York?

A. On the 25th of June, in the afternoon.

Q. In what service was the Harriet Lane?

A. In the naval service of the United States.

Cross-examined by Mr. Brady.

Q. As has already been stated, there was no difficulty about landing the prisoners from the Minnesota at Fortress Monroe, or at the College Hospital, or at Hampton. Was there any difficulty in taking them to Newport News?

A. No, sir; I suppose they might have been taken to Newport News.

Q. Who was in possession of Newport News at that time?

A. The United States troops, sir. Our vessel had been stationed there for six weeks preceding.

Re-direct.

Q. What occupation had the United States of Fortress Monroe, and of this hospital building, and of Newport News? Was it other than a military possession?

(Objected to by defendants' counsel.)

The Court: It is not relevant.

Mr. Evarts: We know there was no physical difficulty in landing them; we want to know whether there was any other.

The Court: We need not go into any other. Practically, they could have been landed there. That is all about it. As to being a military fort, and under military authority, that is not of

consequence.

Mr. Evarts: As to military forts receiving prisoners at all times?

The Court: We do not care about that. It is not important to go into that. We know it is a military fort, altogether under military officers. Civil justice is not administered there, I take it.

Daniel T. Tompkins called by the Government; sworn.

Examined by Mr. Smith.

Q. You were Second Lieutenant on the Harriet Lane?

A. I was, sir.

Q. You were present at the transfer of these prisoners from the Minnesota to the Harriet Lane?

A. Yes, sir.

Q. You were with them to New York?

A. Yes; but I was ashore when they were delivered here.

Q. You accompanied the prisoners on the voyage?

A. Yes, sir.

Q. Where did the Harriet Lane lie at Hampton Roads, in relation to the Fort and Rip Raps?

A. I should think we were about a mile from the Rip Raps, and probably three-fourths of a mile from the Fort.

Q. At the time of the transhipment?

A. Yes, sir.

Q. The transhipment was made in boats?

A. Yes, sir,—in a boat from the Minnesota. I believe all came in one boat.

Q. Where do Hampton Roads commence, as you understand, in respect to where the Harriet Lane was?

A. I think they commence astern of where we lay; a little to the westward, as we were lying off of Old Point.

Q. Look upon that map and indicate, by a pencil, where the vessels lay, without any reference to the marks already made there—in the first place the Minnesota and then the Harriet Lane—when the transhipment was made, taken in relation to the Fort and the Rip Raps?

Witness marks the positions, and adds: We were about half a mile from the Minnesota, I should say.

J. Buchanan Henry called by the prosecution; sworn. Examined by Mr. Smith.

Q. In June and July last you were United States Commissioner? *A.* From the 15th of June.

Q. [Producing warrant.] Is that your signature?

A. It is.

Counsel for prosecution reads warrant, issued by J. Buchanan Henry, in the name of the President, addressed to the Marshal, dated June 26, 1861.

(Objected to as irrelevant. Objection overruled.)

Q. This warrant was issued by you?

A. It was, sir.

Q. On an affidavit filed with you?

A. Yes, sir.

Cross-examined.

Q. Against all these prisoners?

A. Yes, sir.

Defendants take exception to the admission of the testimony.

The U.S. District Attorney was about to call the Marshal, to prove that he arrested the prisoners.

Defendants' counsel admitted the prisoners were arrested, under this warrant, by the Marshal, in this district.

Mr. Brady: Perhaps you can state, Mr. Smith, where they were when arrested under that warrant?

Mr. Smith: They had been brought to the Marshal's office, I think.

Mr. Brady: They were in the Marshal's office when arrested?

Mr. Smith: They were brought to the Marshal's office before the writ was served.

Ethan Allen called by the prosecution; sworn. Examined by Mr. Smith.

Q. You are Assistant District Attorney?

A. I am, sir.

Q. And were in June last?

A. Yes, sir.

Q. Do you remember, at my request, calling upon the prisoners now in Court?

A. I do, sir.

Q. Did you call upon every one?

A. I called upon all the prisoners at the Tombs.

Q. Upon each one separately?

A. I called upon them in the different cells. They were confined two by two.

Q. Had you previously attended, as Assistant District Attorney, upon the examination of these prisoners?

A. I had, upon one or two occasions.

Q. Were the prisoners all present on those occasions?

A. They were present once, I distinctly recollect.

Q. Did you then talk with them?

A. No, sir; I addressed myself to the Commissioner in adjourning the case.

Q. Was there any examination proceeded with?

A. There was no examination.

Q. State what you said to the prisoners, the object of your calling, and what their reply was. I ask, first, did you make a memorandum at the time?

A. I did, sir.

Q. Was it made at the very time you asked the questions?

A. I took paper and pencil in hand, and asked the questions which you requested, and took a note of it.

Q. What was the object of your calling upon them?

A. To ask them where they were born; and, if born elsewhere, were they naturalized.

Q. Did you state for what purpose you made this inquiry?

A. I do not recollect that I made any statement to the prisoners for what purpose I wanted the information. I told them I wanted it. They seemed to recognize me as Assistant District Attorney;

and as to those that did not recognize me, I told them I was Assistant District Attorney. The memorandum produced is the one I made at the time.

Q. Referring to that, give the statements that were made by each of the prisoners in reply to your questions?

A. Henry Cashman Howard said he was born in Beaufort, North Carolina.

Charles Sydney Passalaigue said he was born in Charleston, South Carolina.

Joseph Cruse del Carno said he was born in Manilla, in the Chinese Seas, and was never naturalized.

Thomas Harrison Baker said he was born in Philadelphia.

John Harleston said he was born in Anderson District, or County, in South Carolina.

Patrick Daly was born in Belfast, Ireland. Has never been naturalized.

William C. Clarke born in Hamburg, Germany. Never naturalized.

Henry Oman born in Canton. Never was naturalized.

Martin Galvin born in the County Clare, Ireland. Not naturalized.

Richard Palmer born in Edinburgh. Never naturalized.

Alexander C. Coid was born in Galloway, Scotland. Was naturalized in Charleston,—about 1854 or 1855, he thinks.

John Murphy born in Ireland. Never naturalized.

Mr. Brady: We will insist, hereafter, that this admission of

naturalization cannot be used at all.

Mr. Evarts: We will concede that.

By Mr. Smith: Do you remember asking the prisoners for their full names?

A. I asked them particularly for their full names.

Q. Are they correctly stated in the indictment?

A. They are stated from the memorandum which I then took; that is my only means of recollection.

Mr. Smith: The Assistant District Attorney desires me to state that he did not know that he was to be called as a witness in the case; that if he had had any idea that he would be called as a witness, he would not have made the visit. Yesterday, for the first time, he ascertained that he would be called. I would also state that I did not send him there for the purpose of making him a witness, but with the object of obtaining particulars which might render the allegations in the indictment entirely accurate in respect to every detail.

Mr. Smith added: I now close the case for the prosecution.

OPENING FOR THE DEFENCE

Mr. Larocque opened the case for the defence. He said:

May it please the Court, and you, Gentlemen of the Jury:

We have now reached that stage in this interesting trial where the duty has been assigned to me, by my associates in this defence, of presenting to you the state of facts and the rules of

law on which we expect to ask from you an acquittal of these prisoners. I could wish that it had been assigned to some one more able to present it to you than myself, for I feel the weight of this case pressing upon me, from various considerations connected with it, in a manner almost overpowering. I think that we have proceeded far enough in this case for you to have perceived that it is one of the most interesting trials that ever took place on the continent of America, if not in the civilized world. For the first time, certainly in this controversy, twelve men are put on trial for their lives, before twelve other men, as pirates and—as has been well expressed to you by the learned District Attorney who opened this case on behalf of the prosecution—as enemies of the human race. If you have had time, in the exciting progress of this trial, to reflect in your own minds as to what the import of these words was, it must certainly, ere this, have occurred to you that, in regard to these prisoners, whatever may be the legal consequences of the acts charged upon them, it was a misapplication of the term. Look for a moment, gentlemen, first, at the position of things in our country under which this trial takes place. All these prisoners come before you from a far distant section of the country. Some of them were not born there—some of them were. At the time when these events occurred all of the prisoners lived there, and were identified with that country, with its welfare, with its Government, whatever it was. They had there their homes, their families, everything which attaches a man to the spot in which he lives. Those of

them who had not been born in America had sought it as an asylum. They had come from distant regions of the earth—some from the Chinese Sea and the remote East—because they had been taught there that America was the freest land on the globe. They had lived there for years. Suddenly they had seen the country convulsed from one end to the other. They had seen hostile armies arrayed against each other, the combatants being for the most part divided by geographical lines as to the place where they were born or as to the State in which they lived. This very morning a newspaper in the city of New York estimates the numbers thus arrayed in hostility against each other at no less than seven hundred thousand souls. These prisoners have the misfortune, as I say, of being placed on their trial far from their homes. They have been now in confinement and under arrest on this charge for some four or five months. During that whole period they have had no opportunity whatever of communicating with their friends or relatives. Intercourse has been cut off. They have had no opportunity of procuring means to meet their necessary expenses, or even to fee counsel in their defence. Without the solace of the company of their families, immured in a prison among those who, unfortunately, from friends and fellow-countrymen have become enemies, they are now placed in this Court on trial for their lives. You will certainly reflect, gentlemen, that it was not for a case of this kind that any statute punishing the crime of piracy was ever intended to be enacted. You will reflect, when you come to consider this

case, after the evidence shall have been laid before you, and after you have received instructions from the Court, that however by technical construction our ingenious friends on the other side may endeavor to force on your minds the conviction that this was a case intended to be provided for by statutes passed in the year 1790, and by statutes passed in the year 1820,—it is a monstrous stretch of the provisions of those statutes to ask for a conviction in a case of this kind. And I may be permitted, with very great respect for the constitutional authorities of our Government, to which we all owe our allegiance and respect, to wonder that this case has been brought for trial before you. I cannot help, under the circumstances surrounding these trials—for while you are sitting here, another jury is passing on a similar case in the neighboring City of Philadelphia—attributing the determination of the Government to submit these cases to the judicial tribunals at this time to a desire to satisfy the mind of the community itself, which has been naturally excited on this subject, that these men are not pirates within the meaning of the law. And I do most sincerely hope, for the credit of our Government, that that is the object which it has in view, and that the heart of every officer of the Government, at Washington or elsewhere, will be most rejoiced at the verdict of acquittal, which, I trust, on every consideration, you will pronounce. We all know that in a time of civil commotion and civil war like this, the minds of the people, particularly at the incipient stages of the controversy, become terribly excited and aroused. We could not listen, at the outbreak

of these commotions, to any other name but that of pirate or traitor, as connected with those arrayed against our Government and countrymen. One of the misfortunes of a time of popular excitement like this is, that it pervades not only the minds of the community, but reaches the public halls of legislation, and the executive and administrative departments of the Government. And it is no disrespect, even to the Chief Magistrate of the country to say, that he might, in a time like this, put forward proclamations and announce a determination to do what his more sober judgment would tell him it was imprudent to announce his intention of doing. You will all probably recollect that when this outbreak occurred the Government at Washington announced the determination of treating those who might be captured on board of privateers fitted out in the Confederate States as pirates. Such an announcement once made, it is difficult to depart from. And therefore I do most sincerely hope that the administration in Washington, as my heart tells me must be the case, are looking at these trials in progress here and in Philadelphia, with an earnest desire that the voice of the Juries shall be the voice of acquittal,—thus disembarrassing the Government of the trammels of a proclamation which it were better, perhaps, had never been issued. This civil war had at that time reached no such proportions as those which it has since acquired. It was then a mere beginning of a revolution. The cry was, that Washington was in danger. There were no hostile forces arrayed on the opposite sides of the Potomac. There was a fear that they

would soon make their appearance; and there was also an earnest hope—which I lament most deeply has not been realized—that that outbreak would be stopped in its commencement, and that no armies approaching to the proportions of those which have since been in hostile conflict would be arrayed on the field of battle. Look at the state of things now. Scarcely a day elapses on which battles are not taking place, from one end to the other of this broad continent—in Virginia, Kentucky, Missouri, and other States—and where the opposing forces are not larger than those that met in any battle of the Revolution which gave this country its independence. Does humanity, which rules war as well as peace, permit that while whole States, forming almost one half of the Confederacy; have arrayed themselves as one man—for aught we know to the contrary—while they think, no matter how mistakenly, that they have grievances to be redressed, and that they have a right to exercise that privilege of electing their own Government, which we claimed for ourselves in the day of our own Revolution—does humanity, I say, permit, in such a state of things, one side or the other to treat its opponents as pirates and robbers, as enemies of the human race? Gentlemen, our brave men who are fighting our battles on land and sea have a deep interest in this question; and if the votes of our whole army could be taken on the question of whether, as a matter of State policy, these men should be treated as pirates and robbers, I believe, in my heart, that an almost unanimous vote would go up from its ranks not to permit such a state of things to take place.

I wish to say a word here, gentlemen, preliminarily, on another subject, and that is, what the duty and right of counsel is on a trial of this kind. I hold the doctrine that counsel, when he appears in Court to defend the life of one man, much less the lives of twelve men, is the *alter ego* of his clients—that he has no trammels on his lips, and that his conscience, and his duty to God, and to his profession, must direct him in his best efforts to save the lives of his clients,—and that it becomes his duty; regardless of all other considerations, except adherence to truth and the laws of rectitude, to present every argument for his clients which influenced their minds when they embarked in the enterprise for which they are placed before the Jury on trial for their lives. It is not the fault of counsel, in a case of this kind, if he is obliged to call the attention of the Jury to the past history of his own country, to the cotemporaneous expositions of its Constitution, to the decisions of its Courts of Judicature, and of the highest Court of the Union, which have laid down doctrines with reference to the Constitution of the Government, which are accepted at the present day, entirely incompatible with the success of this prosecution. In doing so, you will certainly perceive that, however much these men on trial for their lives may have been deceived and deluded, as I sincerely think they have been to a very great extent, and, as was frankly admitted by the learned counsel who opened the case for the prosecution, that at least, there was the strongest excuse for that deception and delusion among those of them who

had read the Constitution of their Government, who had read its Declaration of Independence, who had read the cotemporaneous exposition of its Constitution, put forward by the wisest of the men who framed it, and on the honeyed accents of whose lips the plain citizens of the States reposed when they adopted the Constitution. If it had been their good fortune to be familiar with the decisions of its Courts, they had learned what the Supreme Court had said with reference to the sovereign rights of the States, and with reference to the strict limit and measure of power which they had conceded to the General Government, and there was, at least, a very strong excuse for their following those doctrines, however unpopular they may have become in a later day of the Republic.

One of the reasons why I most regret that the Government has thought fit to force these cases to trial at the present time is, that it forces the counsel for the prisoners, in the solemn discharge of their duty to their clients, whose lives hang in the balance, to call the attention of the Jury and the attention of the public to those doctrines, doing which, under other circumstances, might be considered as a needless interference with the efforts of the Government to restore peace to the country. But, as I say, I hold that our clients in this case have a right to all the resources of intelligence with which it has pleased God to bless their counsel. They have a right to every pulsation of their hearts, and I do not know that I can sum up the whole subject in more appropriate language than that used by the Marquis of Beccaria, which was

quoted by John Adams on the trial of some British soldiers in Boston, who, in a time of great public excitement, had shot some citizens, and were placed on trial for their lives before a Jury in Boston. He quoted and adopted on that occasion, as his own, these memorable words of that great philanthropist: "If I can be but the instrument of saving one human life, his blessing and tears of gratitude will be a sufficient consolation to me for the contempt of all mankind." I hold, with John Adams, that counsel on a trial like this has no right to let any earthly consideration interfere with the full and free discharge of his duty to his client; and in what I have to say, and in my course on this trial, I will be actuated by that feeling, and by none other. And, gentlemen, I love my country when I say that; I feel as deep a stake in her prosperity as does any man within the hearing of my voice, and as deep a stake as any man who lives under the protection of her flag.

The Jury have a great and solemn duty to discharge on this occasion. They have the great and solemn duty to discharge of forgetting, if possible, that they are Americans, and of thinking, for the moment, that they have been transformed into subjects of other lands; of forgetting that there is a North or a South, an East or a West, and of remembering only that these twelve men are in peril of their lives, and that this Jury is to judge whether they have feloniously and piratically, with a criminal intent, done the act for which it is claimed their lives are forfeited to their country. I wish to dispel from the minds of the Jury, at the outset of this case,

an illusion which has been attempted to be produced on them, with no improper motive, I am sure, by the counsel who opened the case on the part of the Government—that this trial is a mere matter of form. I tell you, gentlemen, that it is a trial involving the lives of twelve men, and this Jury are bound to assume, from the beginning to the end of the case, that if their verdict shall pronounce these men guilty of the crime of piracy, with which they are charged, every one of them will as surely terminate his life on the scaffold, as the sun will rise on the morrow of the day on which the verdict shall be pronounced. We have nothing to do with what the Government in its justice and clemency may see fit to do after that verdict has been pronounced. We are bound to believe that the Government does not put these men upon their trial with an intention to make the verdict, if it shall be one of guilty, a mere idle mockery. I, for one, while I love my country, and wish its Government to enjoy the respect of the whole world, would not be willing to believe that it would perform a solemn farce of that kind; and, gentlemen, as you value the peace and repose of your own consciences, you will, in the progress of this trial, from its beginning to its end, look on it in this light, and in none other.

Now, gentlemen, what is the crime of piracy, as we have all been taught to understand it from our cradle? My learned friend has given one definition of what a pirate is, by saying that he is the enemy of the human race. And how does his crime commence? Is it blazoned, before he starts on his wicked

career, in the full light of the sun, or is it hatched in secret? Does it commence openly and frankly, with the eyes of his fellow-citizens looking on from the time that the design is conceived, or does it originate in the dark forecastle of some vessel on the seas, manned by wicked men, to whom murder and robbery have been familiar from their earliest days, and who usually commence by murdering the crew of the vessel, the safety of which has been partly entrusted to them? And when the first deed of wickedness has been done which makes pirates and outcasts of the men who perpetrated it, what is their career from that moment to the time when they end their lives, probably on the scaffold? Is it not one of utter disregard to the laws of God and man, and to those of humanity? Is it not a succession of deeds of cruelty, of rapine, of pillage, of wanton destruction? Who ever heard of pirates who, in the first place, commenced the execution of their design by public placards posted in the streets of a populous city like Charleston, approved of by their fellow-citizens of a great and populous city, and not only by them, but by the people of ten great and populous States? And who ever heard of pirates who, coming upon a vessel that was within the limits of the commission under which they were acting, took her as a prize, with an apology to her Captain for the necessity of depriving him of his property, and claiming to act under the authority of ten great and populous States, and under that authority alone? And who ever heard of pirates doing what has been testified to in this case by the witnesses for the Government,—taking one

ship because she belonged to the enemies of the Confederate States, to which they sincerely believed they owed the duty of allegiance, and passing immediately under the stern of another vessel, because they knew by her build and appearance that she was a British vessel, and not an enemy of their country, as they believed?

But, gentlemen, the difficulties with which the prosecution had to contend, in making out this case, are too great to be lost sight of; and the Jury must certainly have seen how utterly preposterous it is to characterize as piracy acts of this kind. Who ever heard of a pirate who, having seized a prize, put a prize-crew on board of her, sent her home to his native port—a great and civilized city, in a great and populous country—to be submitted to the adjudication of the Courts in that city, and to be disposed of as the authorities of his home should direct? I beg to call your attention to the facts that have been brought out on the testimony for the prosecution itself—that, in regard to this vessel, instead of her crew having been murdered—instead of helpless women and children having been sent to a watery grave, after having suffered, perhaps, still greater indignities—that not a hair of the head of any one was touched,—that not a man suffered a wound or an indignity of any kind—that they were sent, as prisoners of war, into the neighboring port of Georgetown, where, in due time, by decree of a court, the vessel was condemned and sold—and the prisoners, having been kept in confinement some time as prisoners of war, were released, and have been enabled to come

into Court and testify before you.

Comparing this case, gentlemen, with the cases which are constantly occurring in the land, what earthly motive can you conceive, on the part of the Government, for having made the distinction between these poor prisoners, taken on board of this paltry little vessel of 40 or 50 tons, and the great bands in arms in all parts of the country? Look what occurred a little while ago in Western Virginia, where a large force of men, in open arms against the Government, who had been carrying ravage and destruction through that populous country, and over all parts of it, were captured as prisoners. Were any of those men sent before a court, to be tried for their lives? Did not the commanding officer of the forces there, acting under the authorization, and with the approval, of the Government, release every one of those men, on his parole of honor not to bear arms any more against the country? And what earthly motive can be conceived for making the distinction which is attempted to be made between these men and those? Shall it be said, to the disgrace of our country—for it would be a disgrace if it could be justly said—that we had not courage and confidence enough in our own resources to believe that we would be able to cope with these adversaries in the field in fair and equal warfare? Gentlemen, I think it would be a cowardly act, which would redound to the lasting disgrace of the country, to have it said, one century or two centuries hence, that, in this great time of our country's troubles and trials, eighteen States of this Confederacy, infinitely the most populous, infinitely the

most wealthy, abounding in resources, with a powerful army and navy, were obliged to resort to the halter or the ax for the purpose of intimidating those who were in arms against them. I do not think that any one of this Jury would be willing to have such a thing said.

Now, gentlemen, with regard to the conduct of these men, an impression has been attempted to be created on your minds by one circumstance, and that is, that at the time of the capture of the Joseph by the Savannah the American flag was hoisted on board the Savannah, and that the Joseph came down to her, and permitted her to approach from the false security and confidence occasioned by that circumstance. The time has now arrived to dispel the illusion from your mind that there was anything reprehensible in that, or anything in it not warranted by the strictest rules of honor and of naval warfare. Why, gentlemen, I could not give you a more complete parallel on that subject than one which occurred at the time of the chase of the Constitution by a British fleet of men-of-war, and the escape of the Constitution from which fleet at that time reflected such lasting honor on our country and her naval history. You will all recollect that the Constitution, near the coast of our country, fell in with and was chased for several days by a large British fleet. Let me read to you one short sentence, showing what occurred at that time. I read from Cooper's Naval History:

> "The scene, on the morning of this day, was very beautiful, and of great interest to the lovers of nautical

exhibitions. The weather was mild and lovely, the sea smooth as a pond, and there was quite wind enough to remove the necessity of any of the extraordinary means of getting ahead that had been so freely used during the previous eight and forty hours. All the English vessels had got on the same tack with the Constitution again, and the five frigates were clouds of canvas, from their trucks to the water. Including the American ship, eleven sail were in sight; and shortly after a twelfth appeared to windward; that was soon ascertained to be an American merchantman. But the enemy were too intent on the Constitution to regard anything else, and though it would have been easy to capture the ships to leeward, no attention appears to have been paid to them. *With a view, however, to deceive the ship to windward, they hoisted American colors, when the Constitution set an English ensign, by way of warning the stranger to keep aloof.*"

After that, I hope we will hear no more about the Savannah having hoisted the American flag for the purpose of inducing the Joseph to approach her.

It now becomes my duty, gentlemen, to call your attention, very briefly, to the grounds on which the prosecution rests this case. There are two grounds, and I will notice them in their order. The first is, that this was robbery. Well, I have had occasion, already, in what I have said to you, to call your attention to some of the points that distinguish this case from robbery. I say it was not robbery, because, in the first place, one of the

requisites of robbery on the sea, which is called piracy, is, that it shall be done with a piratical and felonious intent. The intent is what gives character to the crime; and the point that we shall make on that part of the case is this, that if these men, in the capture of the Joseph (leaving out of view for the present the circumstance of their having acted under a commission from the Confederate States), acted under the belief that they had a right to take her, there was not the piratical and felonious intent, and the crime of robbery was not committed. I will very briefly call your attention to a few authorities on that subject. One of the most standard English works, and the most universally referred to on this subject of robberies, is *Hale's Pleas of the Crown*. Hale says:

> "As it is *cepit* and *asportavit* so it must be *felonice* or *animo furandi*, otherwise it is not felony, for it is the mind that makes the taking of another's goods to be a felony, or a bare trespass only; but because the intention and mind are secret, they must be judged by the circumstances of the fact, and though these circumstances are various and may sometimes deceive, yet regularly and ordinarily these circumstances following direct in this case.
>
> "If *A*, thinking he hath a title to the horse of *B*, seizeth it as his own, or supposing that *B* holds of him, distrains the horse of *B* without cause, this regularly makes it no felony, but a trespass, because there is a pretence of title; but yet this may be but a trick to color a felony, and the ordinary discovery of a felonious intent is, if the party does it secretly,

or being charged with the goods, denies it.* * * * *

"But in cases of larceny, the variety of circumstances is so great, and the complications thereof so weighty, that it is impossible to prescribe all the circumstances evidencing a felonious intent; on the contrary, the same must be left to the due and attentive consideration of the Judge and Jury, wherein the best rule is, *in dubiis*, rather to incline to acquittal than conviction."

The next authority on that subject to which I will refer you is 2*d East's Pleas of the Crown, p.* 649. The passage is:

"And here it may be proper to remark, that in any case, if there be *any fair pretence* of property or *right* in the prisoner, *or if it be brought into doubt at all, the court will direct an acquittal; for it is not fit that such disputes should be settled in a manner to bring men's lives into jeopardy.*

"The owner of ground takes a horse *damage feasant*, or a lord seizes it as an estray, though perhaps without title; yet these circumstances explain the intent, and show that it was not felonious, unless some act be done which manifests the contrary: as giving the horse new marks to disguise him, or altering the old ones; for these are presumptive circumstances of a thievish intent."

I call attention also to the case of *Rex* vs. *Hall*, *3d Carrington & Payne*, 409, which was a case before one of the Barons of the Exchequer in England. It was an indictment for robbing John Green, a gamekeeper of Lord Ducie, of three hare-wires and a pheasant. It appeared that the prisoner had set three hare-wires

in a field belonging to Lord Ducie, in one of which this pheasant was caught; and that Green, the gamekeeper, seeing this, took up the wires and pheasant, and put them into his pocket; and it further appeared that the prisoner, soon after this, came up and said, "Have you got my wires?" The gamekeeper replied that he had, and a pheasant that was caught in one of them. The prisoner asked the gamekeeper to give the pheasant and wires up to him, which the gamekeeper refused; whereupon the prisoner lifted up a large stick, and threatened to beat the gamekeeper's brains out if he did not give them up. The gamekeeper, fearing violence, did so.

Maclean, for the prosecution, contended—

> "That, by law, the prisoner could have no property in either the wires or the pheasant; and as the gamekeeper had seized them for the use of the Lord of the Manor, under the statute 5 Ann, c. 14, s. 4, it was a robbery to take them from him by violence."

Vaughan, B., said:

> "I shall leave it to the Jury to say whether the prisoner acted on an impression that the wires and pheasant were his property, for, however he might be liable to penalties for having them in his possession, yet, if the Jury think that he took them under a *bona fide* impression that he was only getting back the possession of his own property, there is no *animus furandi*, and I am of opinion that the prosecution must fail.

"Verdict—Not guilty."

Without detaining the Court and Jury to read other cases, I will simply give your honors a reference to them. I refer to the *King* vs. *Knight*, cited in 2*d East's Pleas of the Crown*, p. 510, decided by Justices *Gould* and *Buller*; the case of the *Queen* vs. *Boden*, 1*st Carrington and Kirwan*, p. 395; and for the purpose of showing that this is the same rule which has been applied by the Courts of the United States, in these very cases of piracy, I need do nothing more than read a few lines from a case cited by the counsel for the prosecution in opening the case of the *United States* vs. *Tully*, 1*st Gallison's Circuit Court Reports*, 247, where Justices Story and Davis say, that to constitute the offence of piracy, within the Act of 30th April, 1790, by "piratically and feloniously" running away with a vessel, "the act must have been done with the wrongful and fraudulent intent thereby to convert the same to the taker's own use, and to make the same his own property, against the will of the owner. The intent must be *animo furandi*."

Now, gentlemen, I think that when you come to consider this case in your jury-box, whatever other difficulties you may have, you will very speedily come to the conclusion that the taking of the Joseph was with no intent of stealing on the part of these prisoners.

But, gentlemen, there is another requisite to the crime of robbery, which, I contend, and shall respectfully attempt to show to you, is absent from this case. I mean, it must be by violence, or

putting him in fear that the property is taken from the owner, and that the crime of robbery is committed. I beg to refer the Court to the definition of robbery in *1st Blackstone's Commentaries*, p. 242, and *1st Hawkins' Pleas of the Crown*, p. 233, where robbery at common law is defined to be "open and violent *larceny*, the rapina of the civil law, the *felonious* and *forcible* taking from the person of another of goods or money to any value by violence, or putting him in fear."

Now, gentlemen, I say there was nothing of that kind in this case. What are the circumstances as testified to by the witnesses for the prosecution? The circumstances are, that the Joseph and the Savannah, having approached within hailing distance, the Captain of the Savannah hailed the Captain of the Joseph, standing on the deck of his own vessel, and requested him to come on board and bring his papers. The answer of the Captain of the Joseph was an inquiry by what authority that direction was given; and the Captain of the Savannah replied, "by the authority of the Confederate States." Whereupon the Captain of the Joseph, in his own boat, with two of his crew, went alongside the Savannah, was helped over the side by the Captain of the Savannah, and was informed by him that he was under the disagreeable necessity of taking his vessel and taking them prisoners; and without the slightest force or violence being used by the Captain, or by a single member of the crew of the Savannah—without a gun being fired, or even loaded, so far as anything appears—the Captain of the Joseph voluntarily

submitted, yielded up his vessel, and there was not the slightest violence or putting any body in fear.

Therefore, gentlemen, I say, that so far as the crime charged here is the crime of robbery, there is no evidence in the case under which, on either of these grounds, by reason of the secrecy of the act, or the violence or putting in fear, or the showing a felonious intent, by the evidence for the prosecution, these prisoners can be convicted under the indictment before you. To show that the definition of robbery at common law is the one that applies to these statutes of the United States, I beg to refer your honors to cases in the Supreme Court of the United States. I refer to the case of the *United States* vs. *Palmer, 3 Wheaton, 610*; the *United States* vs. *Wood, 3d Washington, 440*; and the *United States* vs. *Wilson, 1 Baldwin,* p. 78.

But, gentlemen, there is another set of counts in this indictment on which, probably, as to those who are citizens, a conviction will be pressed for by counsel on the part of the Government. That is a set of counts to which I am about to call your attention in reference to the acts under which they were framed. You will recollect this, gentlemen, that under the counts charging the offence of robbery, the majority of these prisoners must be convicted, or none of them can be convicted at all, for reasons which I will immediately give you. The only statute under which it is claimed on the part of the prosecution that a conviction can be had, if not for robbery on the high seas, imperatively requires that the prisoners to be convicted must be

citizens of the United States. There are twelve prisoners here, and by the statement of the last witness produced on the part of the prosecution, only four of them appear to be citizens of the United States, or ever to have been citizens of the United States. The others were all born in different countries in Europe and Asia, and had never been naturalized; and the Court, whenever this case comes before you, so far as that point is concerned, will give you the evidence on the subject, by which you will see exactly which of these prisoners had ever been citizens of the United States, and which of them had not been. I therefore proceed to examine as to what the statute is, and what the requisites are for a conviction of those who were citizens of the United States at any time. I will read to you the section of the statute to which I have reference. It is the 9th section of the Act of 1790. It reads, "That if any *citizen* shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high seas, under color of any commission from any *foreign Prince* or *State*, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged, and taken to be a pirate, felon, and robber, and, on being thereof convicted, shall suffer death."

Now, it will be interesting and necessary to understand the circumstances under which that statute was passed, and the application which it was intended to have. I will briefly read to you the explanation of that subject, which your honors will find

in *Hawkins' Pleas of the Crown, 1st Vol., p.* 268. Hawkins says:

> "It being also doubted by many eminent civilians whether, during the Revolution, the persons who had captured English vessels by virtue of commissions granted by James 2nd, at his court at St. Germain, after his abdication of the throne of England, could be deemed pirates, the grantor still having, as it was contended, the right of war in him; it is enacted by 11 and 12 Will. III., chap. 7, sec. 8, 'That if any of his Majesty's natural born subjects or denizens of this Kingdom shall commit any piracy or robbery, or any act of hostility against others of his Majesty's subjects upon the sea, under color of any commission from any foreign Prince or State, or pretence of authority from any person whatsoever, such offender or offenders, and every of them, shall be deemed, adjudged, and taken to be pirates, felons, and robbers; and they and every of them, being duly convicted thereof according to this Act or the aforesaid statute of King Henry the Eighth, shall have and suffer such pains of death, loss of land and chattels, as pirates, felons, and robbers upon the sea ought to have and suffer.'"

Your honors will find that further referred to in the case of the *United States* vs.*Jones*, *3d Wash. Cir. Court Reps. p.* 219, in these terms:

> "The 9th sec. of this law (the Act of 1790) is in fact copied from the statute of the 11th and 12th Wm. 3d, ch. 7, the history of which statute is explained by Hawkins. It was aimed at Commissions granted to Cruisers by James

II., after his abdication, which, by many, were considered as conferring a legal authority to cruise, so as to protect those acting under them against a charge of piracy. Still, we admit that unless some other reason can be assigned for the introduction of a similar provision in our law, the argument which has been founded on it would deserve serious consideration. We do not think it difficult to assign a very satisfactory reason for the adoption of this section without viewing it in the light of a legislative construction of the 8th sec, or of the general law.

"If a citizen of the United States should commit acts of depredation against any of the citizens of the United States, it might at least have been a question whether he could be guilty of piracy if he acted under a foreign commission and within the scope of his authority. He might say that he acted under a commission; and not having transgressed the authority derived under it, he could not be charged criminally. But the 9th sec. declares that this shall be no plea, because the authority under which he acted is not allowed to be legitimate. It declares to the person contemplated by this section, that in cases where a commission from his own Government would protect him from the charge of piracy, that is, where he acted within the scope of it or even where he acted fairly but under a mistake in transgressing it, yet that a *foreign* commission should afford him no protection, even although he had not exceeded the authority which it professed to give him. But it by no means follows from this that a citizen committing depredations upon foreigners or citizens, not authorized

by the commission granted by his own Government, *and with a felonious intention*, should be protected by that commission against a charge of piracy. Another object of this section appears to have been to declare that acts of hostility committed by a citizen against the United States upon the high seas, *under pretence of a commission issued by a foreign Government, though they might amount to treason, were nevertheless piracy and to be tried as such*."

Your honors will find another very interesting history in reference to this statute in *Phillimore's International Law, 1st vol., sec. 398*. Phillimore says:

"Soon after the abdication of James II., an international question of very great importance arose, namely, what character should be ascribed to privateers commissioned by the monarch, who had abdicated, to make war against the adherents of William III., or rather against the English, while under his rule. The question, in fact, involved a discussion of the general principle, whether a deposed sovereign, claiming to be sovereign *de jure*, might lawfully commission privateers against the subjects and adherents of the sovereign *de facto* on the throne; or whether such privateers were not to be considered as pirates, inasmuch as they were sailing *animo furandi et depraedundi*, without any *national* character. The question, it should be observed, did not arise in its full breadth and importance *until James II. had been expelled from Ireland as well as England, until, in fact, he was a sovereign, claiming to be such de jure*, but confessedly without territory. It appears that James, after he

was in this condition, continued to issue letters of marque to his followers. The Privy Council of William III. desired to hear civilians upon the point of the piratical character of such privateers. The arguments on both sides are contained in a curious and rather rare pamphlet, published by one of the counsel (Dr. Tindal) for King William, in the years 1693-4. The principal arguments for the piratical character of the privateers appear to have been—

"That they who acted under such commission may be dealt with as if they had acted under their own authority or the authority of any private person, and therefore might be treated as pirates. That if such a titular Prince might grant commissions to seize the ships and goods of all or most trading nations, he might derive a considerable revenue as a chief of such freebooters, and that it would be madness in nations not to use the utmost rigor of the law against such vessels.

"That the reason of the thing which pronounced that robbers and pirates, when they formed themselves into a civil society, became just enemies, pronounced also that a king without territory, without power of protecting the innocent or punishing the guilty, or in any way of administering justice, dwindled into a pirate if he issued commissions to seize the goods and ships of nations; and that they who took commissions from him must be held by legal inference to have associated *sceleris causâ*, and could not be considered as members of a civil society."

I will not occupy the time of the Court and Jury by

recapitulating the rest of the arguments which were urged with very great ability by the learned and distinguished civilians arrayed against each other in that interesting debate. But the points which arise, and which the Court will have, in due time, to instruct you upon, we respectfully claim and insist are these: That this English statute, after which our own statute was precisely copied, was intended only to apply to the case of pirates cruising under a commission pretended to have been given, in the first place, by a Prince deposed, abdicated, not having a foot of territory yielding him obedience in any corner of the world; and, in the next place, that it was intended to be aimed against those cruising under a commission issued under the pretence of authority from a foreigner, and not from the authorities over them *de jure* or *de facto*, or from any authorities of the land in which they lived, and where the real object was depredation; because, where it was issued by a monarch without territory—by a foreigner, having no rule, and no country in subjection to him—there could be no prize-court, and none of the ordinary machinery for disposing of prizes captured, according to the rules of international law; and, lastly, it was intended to apply to the case of a citizen, taking a privateer's commission from a foreign Government as a pretence to enable him to cruise against the commerce of his own countrymen. But it was never intended to apply to a case of this kind, where the commission was issued by the authorities of the land in which the parties receiving it live, exercising sway and dominion over them, whether *de jure*

or *de facto*.

Now, gentlemen, so far I have thought it necessary to go in explanation of what the statutes were, of the circumstances bearing on them, and of the requisites which the prosecution had to make out, in order to ask a conviction at your hands. I come now, for the purpose of this opening, to lay before you what we shall rely upon in our defence. The first defence, as has already appeared to you from the course of the examination of the prosecution's witnesses, has reference to the question of the jurisdiction of this Court to hear and determine this controversy. The statute has been already read to you, on which that question of jurisdiction rests; but, for fear that you do not recollect it, I will beg once more to call your attention to it. The concluding paragraph of sec. 14 of the Act of 1825, 4th vol. of the Statutes at Large, p. 118, is as follows:

> "And the trial of all offences which shall be committed on the high seas or elsewhere out of the limits of any State or District, shall be in the District where the offender is apprehended, or into which he may first be brought."

Now, you observe that the language of the statute is imperative—the reasons which led to its adoption were also imperative and controlling. It is necessary that the law shall make provision for the place where a man shall be put on trial under an indictment against him; and the law wisely provides that in cases of offences committed on the land, the trial shall only take place where the offence was committed. It was thought even necessary

to provide for that by an amendment to the Constitution of the United States, in order that there might be no misunderstanding of, and no departure from, the rule.

The Constitution, by one of its amendments, in the same paragraph which provides for the right of every accused to a speedy and impartial trial, provides also that that trial shall take place in the District, which District shall first have been ascertained by law; and as I said to you, in cases of crimes committed on the land, that District must be the District where the offence was committed, and no other.

Now look at the state of things here, gentlemen. These men are all citizens or residents of the State of South Carolina, and have been so for years. This vessel was fitted out in South Carolina. The authority under which she professed to act was given there. The evidence for the defence, if it could be got, must come from there. All the circumstances bearing on the transaction occurred in that section of the country, and not elsewhere,—occurred in a country which is now under the same Government and domination as Virginia, because Virginia is included at present under the domination and Government of the Confederate States.

Well, with reference to offences committed at sea, the officers capturing a prize have a right to bring it into any port, it is true, and the port where the prisoners are brought is, as we claim under the construction of the statute, the port where the trial is to take place; the port where the prisoners are first brought, whether

they are landed or not. On that question of jurisdiction the rule is this: The jurisdiction of the State extends to the distance of a marine league from shore; and if these prisoners were brought on this vessel within the distance of three miles from the shores of Virginia, where the vessel anchored, as in port, having communication with the land, the jurisdiction of the Circuit Court of the Eastern District of Virginia attached, and they could not, after that, be put on trial for that offence elsewhere. It is not necessary for me now to trouble the Jury with re-reading authorities which were read upon this subject yesterday. In a case which occurred some years ago, before Judge Story, the learned Judge had fallen into a misapprehension on a question which did not necessarily arise, because the facts to give rise to it did not occur in the case. An offence had been committed—an attempt to create a revolt on board of a vessel at sea. Those who had made the attempt had either repented of the design, or had not succeeded in it; at all events, they had afterwards gone on to do their duty on the vessel, and had not been incarcerated on board the vessel at all. The vessel first got into a port in Connecticut, and finally got into a port in Massachusetts, and there, for the first time, those prisoners were arrested and put into confinement. Undoubtedly the Court in Massachusetts had jurisdiction in that case; but Judge Story, speaking on a question which did not arise, appeared to treat the language of the statute as being alternative, giving the Government the right to select one of two places for the trial. That was corrected in a late case which

came before the Court in Massachusetts, in the same District where Judge Story had decided the previous case. Both Judge Sprague, of the District Court, and Judge Clifford, of the Circuit Court, held that in a case where prisoners had been captured as malefactors on the high seas, and had been confined on board a United States vessel, where the vessel had gone into Key West for a temporary purpose, to get water, without the prisoners ever having been landed, and where they went from thence to Massachusetts, where the prisoners were arrested by the civil authorities and imprisoned, that the Court of Massachusetts had no jurisdiction whatever. Under the instructions of the Court, the Grand Jury refused to find an indictment, and a warrant of removal was granted to remove the prisoners for trial in the Court at Key West,—the Court of Massachusetts holding that that was the only place where they could be tried for the offence, because the vessel having them in custody as prisoners had touched there to get water on her voyage. We have not even the information in that case as to whether the vessel went within three miles of the shore; it was enough that she had communicated with Key West, and that the prisoners might have been landed there; but it was held that the Government had not a right to elect the place of trial of the prisoners; and it is important, particularly in cases of this kind, that no one shall have the right to elect a place of trial. I say that, not with the slightest intention of imputing any unfair motives to the Government, to the officers of the Navy, or any one else. It is a great deal better that where men are to

be put on trial for their lives, they should have the benefit of the chapter of accidents.

If it would have been any better for these prisoners to have had a Jury to try them in Virginia, they were entitled to the benefit of that. In saying so, I mean no reflection on any Jury in New York. I have no doubt you will try this case as honestly, as fairly, and as impartially as any Jury in Virginia could try it. But at the same time we all know that if this right of election can be resorted to on the part of the United States, men might suffer, not from any wrong intention, but from the natural and inevitable and often unconscious tendency of those who are to prosecute, to select the place of prosecution most convenient for themselves.

We shall therefore claim before you, gentlemen, following the rule laid down in Massachusetts by Judge Clifford and Judge Sprague, that this vessel, having been within a marine league of the shore of Virginia, was within the jurisdiction of the District Court of Virginia, and that that was the only place where they could be tried. Suppose, as was well suggested to me by one of my associates, that on the Minnesota, lying where she did, or on the Harriet Lane, lying where she did in Hampton Roads, a murder had been committed: could it be contended by any one that the United States Court in Virginia would not have had jurisdiction, and the only jurisdiction over the case?

Now, gentlemen, that is all which, on the opening of this case, I am going to say on the subject of jurisdiction.

Our next defence will be, that the commission in this case

affords adequate protection to these prisoners; and we will put that before you in several points of view. It will undoubtedly be read to you in evidence. It was one of the documents found on board this vessel.

Mr. Evarts: It is not in evidence; and how can counsel open to the Jury upon a commission which is not in evidence?

Judge Nelson: Counsel can refer to it as part of his opening.

Mr. Larocque: Now, gentlemen, you will recollect that the counsel for the prosecution, in framing this indictment, has treated this in the way in which we claim he was bound to treat it; that is to say, that the 9th section of the Act of 1790 was intended to refer exclusively to offences claimed to have been committed under a commission; throwing on the prosecution the necessity of setting forth the commission or the pretence of authority. Having set it forth, the prosecution is bound by the manner in which it is described in the indictment; and if it is described as something which it is not, the prisoners must have the benefit of that mis-description.

Now, in framing this indictment, the counsel for the prosecution has set forth that the prisoners claimed to act under a commission issued by one Jefferson Davis. That is to say, he has attempted to ground his claim to a conviction on that section of the statute. You will recollect that the statute reads, "under pretence of any commission granted by any foreign Prince or State" (which the Courts of the United States have held, to mean a foreign State), "or under pretence of authority from any

person." And it was necessary, in order to ground an indictment on that section of the statute, to bring this case within the exact letter or words of one or the other clause of that section of this statute. It would not do for them to claim that this commission was issued by a foreign Prince or foreign State, because, if by a foreign Prince or foreign State, there would be no doubt or question that all of these parties were citizens of that foreign State or residents there, and were not citizens of the United States. Of course, if this were a foreign State, they were foreign citizens, and not citizens of the United States.

What is this commission? As we shall lay it before you, it reads in this way:

> "Jefferson Davis,
>
> "President of the Confederate States of America,
>
> "To all who shall see these Presents, Greeting:
>
> "Know ye, That by virtue of the power vested in me by law, I have commissioned, and do hereby commission, have authorized, and do hereby authorize, the schooner or vessel called the 'Savannah' (more particularly described in the schedule hereunto annexed), whereof T. Harrison Baker is commander, to act as a private armed vessel in the service of the Confederate States, on the high seas, against the United States of America, their ships, vessels, goods, and effects, and those of their citizens, during the pendency of the war now existing between the said Confederate States and the said United States.
>
> "This commission to continue in force until revoked by

the President of the Confederate States for the time being.
"Given under my hand and the seal of the Confederate States, [c.s.] at Montgomery, this eighteenth day of May, A.D. 1861.

"(Signed) JEFFERSON DAVIS.

"By the President.
"R. TOOMBS,
"*Secretary of State*.

"SCHEDULE OF DESCRIPTION OF THE VESSEL

"Name—Schooner 'Savannah.'
"Tonnage—Fifty-three 41/95 tons.
"Armament—One large pivot gun and small arms.
"No. of Crew—Thirty."

That is the document, bearing the seal of ten States, signed by Jefferson Davis as President—signed by the Secretary of State for those ten States, which the learned counsel who framed the indictment has undertaken to call "a pretence of authority from one Jefferson Davis." The counsel was forced to frame his indictment in that way; for if he had alleged in the indictment that it was by pretence of authority from the Confederate States—to wit, South Carolina, Georgia, &c., naming States which this Government, for the purpose of bringing this prosecution at all, must claim to be in the Union—it would be clearly outside of

the provision of the statute, and could never get before a Jury, because it would have been dismissed on application to the Court beforehand. But the learned counsel has sought, by stating an argumentative conclusion of law in his indictment, according to his understanding of it, to bring within the statute a case which the statute was not meant to meet—an entirely different and distinct case. I submit to you, that that cannot be done,—that the commission on its face does not purport to be a commission granted by any person. It purports to be, and, if anything, it is, a commission granted by authority of the States that are joined together under the name of Confederate States; and, gentlemen, as I said, we shall claim before you that this commission is a protection to these parties, against the charge of piracy, upon various distinct grounds.

In the first place, we shall claim before you that the Government, called the Government of the Confederate States (whether you call it a Government *de jure* or a Government *de facto*, or whatever name under the nomenclature of nations you choose to give it), is the present existing Government of those States, exercising dominion over them, without any other Government having an officer or court, or any insignia of Government within them.

This is a point which, at a future stage of the case, my learned associate, who is much better able to do so than I am, will have occasion to dwell upon. I wish, however, to call your attention to the rules as they have been laid down; and first, I would

desire to refer you, and also to call the attention of the Court, to what is said by Vattel,—who, as you all probably know, is one of the most celebrated authors upon international rights, and international law, and who is received as authority upon that subject in every Court in Europe and America. I refer to Vattel, book 1, chap. 17, secs. 201 and 202, where he says:

> "*Sec. 201.* When a city or province is threatened, or actually attacked, it must not, for the sake of escaping a danger, separate itself, or abandon its natural Prince, even when the State or the Prince is unable to give it immediate and effectual assistance. Its duty, its political engagements, oblige it to make the greatest efforts in order to maintain itself in its present state. If it is overcome by force, necessity, that irresistible law, frees it from its former engagements, and gives it a right to treat with the conqueror, in order to obtain the best terms possible. If it must either submit to him or perish, who can doubt but it may, and even ought to prefer the former alternative? Modern usage is conformable to this decision,—a city submits to the enemy, when it cannot expect safety from vigorous resistance. It takes an oath of fidelity to him, and its sovereign lays the blame on fortune alone."
>
> "*Sec. 202.* The State is obliged to protect and defend all its members; and the Prince owes the same assistance to his subjects. If, therefore, the State or the Prince refuses or neglects to succor a body of people who are exposed to imminent danger, the latter, being thus abandoned, become perfectly free to provide for their own safety and

preservation in whatever manner they find most convenient, without paying the least regard to those who, by abandoning them, have been the first to fail in their duty. The Canton of Zug, being attacked by the Swiss in 1352, sent for succor to the Duke of Austria, its sovereign; but that Prince, being engaged in discourse concerning his hawks at the time when the deputies appeared before him, would scarcely condescend to hear them. Thus abandoned, the people of Zug entered into the Helvetic Confederacy. The city of Zurich had been in the same situation the year before. Being attacked by a band of rebellious citizens, who were supported by the neighboring nobility, and the House of Austria, it made application to the head of the Empire; but Charles IV., who was then Emperor, declared to its deputies that he could not defend it, upon which Zurich secured its safety by an alliance with the Swiss. The same reason has authorized the Swiss in general to separate themselves entirely from the Empire which never protected them in any emergency. They had not denied its authority for a long time before their independence was acknowledged by the Emperor, and the whole Germanic Body, at the treaty of Westphalia."

I also refer to the case of the United States *v.* Hayward, 2 Gallison, 485, which was a writ of error to the District Court of Massachusetts, in a case of alleged breach of the revenue laws. It appears that Castine (in Maine) was taken possession of by the British troops on the 1st of September, 1814, and was held in their possession until after the Treaty of Peace.

Judge Story says:

> "The second objection is, that the Court directed the Jury that Castine was, under the circumstance, a foreign port. By 'foreign port,' as the terms are here used, may be understood a port within the dominions of a foreign sovereign, and without the dominions of the United States. The port of Castine is the port of entry for the District of Penobscot, and is within the acknowledged territory of the United States. But, at the time referred to in the bill of exceptions, it had been captured, and was in the open and exclusive possession of the enemy. *By the conquest and occupation of Castine, that territory passed under the allegiance and sovereignty of the enemy. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced, or be obligatory upon the inhabitants, who remained and submitted to the conquerors.*"

Now, gentlemen, I must trouble you, very briefly, with a reference to one or two other authorities on that subject. At page 188 of Foster's Crown Law that learned author says:

> "*Sec 8.* Protection and allegiance are reciprocal obligations, and consequently the allegiance due to the Crown must, as I said before, be paid to him who is in the full and actual exercise of the regal powers, and to none other. I have no occasion to meddle with the distinction between Kings *de facto* and Kings *de jure*, because the warmest advocates for that distinction, and for the principles upon which it hath been founded, admit that even a King *de*

facto, in the full and sole possession of the Crown, is a King within the Statute of Treasons; it is admitted, too, that the throne being full, any other person out of possession, but claiming title, is no King within the act, be his pretensions what they may.

"These principles, I think, no lawyer hath ever yet denied. They are founded in reason, equity, and good policy."

And again, at page 398, he continues:

"His Lordship [Hale] admitted that a temporary allegiance was due to Henry VI. as being King *de facto*. If this be true, as it undoubtedly is, with what color of law could those who paid him that allegiance before the accession of Edward IV. be considered as traitors? For call it a temporary allegiance, or by what other epithet of diminution you please, still it was due to him, while in full possession of the Crown, and consequently those who paid him that due allegiance could not, with any sort of propriety, be considered as traitors for doing so.

"The 11th of Henry VII., though subsequent to these transactions, is full in point. For let it be remembered, that though the enacting part of this excellent law can respect only future cases, the preamble, which his Lordship doth not cite at large, is declaratory of the common law: and consequently will enable us to judge of the legality of past transactions. It reciteth to this effect, 'That the subjects of England are bound by the duty of their allegiance to serve their Prince and Sovereign Lord for the time being,

in defence of him and his realm, against every rebellion, power, and might raised against him; and that whatsoever may happen in the fortune of war against the mind and will of the Prince, as in this land, some time past it hath been seen, it is not reasonable, but against all laws, reason, and good conscience, that such subjects attending upon such service should suffer for doing their true duty and service of allegiance.' It then enacteth, that no person attending upon the King for the time being in his wars, shall for such service be convict or attaint of treason or other offence by Act of Parliament, or otherwise by any process of law."

The author says then:

"Here is a clear and full parliamentary declaration, that by the antient law and Constitution of England, founded on principles of reason, equity, and good conscience, the allegiance of the subject is due to the King for the time being, and to him alone. This putteth the duty of the subject upon a rational, safe bottom. He knoweth that protection and allegiance are reciprocal duties. He hopeth for protection from the Crown, and he payeth his allegiance to it in the person of him whom he seeth in full and peaceable possession of it. He entereth not into the question of title; he hath neither leisure or abilities, nor is he at liberty to enter into that question. But he seeth the fountain, from whence the blessings of Government, liberty, peace, and plenty flow to him; and there he payeth his allegiance. And this excellent law hath secured him against all after reckonings on that account."

And another author on that subject [Hawkins], in his Pleas of the Crown, Book I., chap. 17, sec. 11, says:

> "As to the third point, who is a King within this act? [26 Edw. 3, ch. 2.] It seems agreed that every King for the time being, in actual possession of the crown, is a King within the meaning of this statute. For there is a necessity that the realm should have a King by whom and in whose name the laws shall be administered; and the King in possession being the only person who either doth or can administer those laws, must be the only person who has a right to that obedience which is due to him who administers those laws; and since by virtue thereof he secures to us the safety of our lives, liberties, and properties, and all other advantages of Government, he may justly claim returns of duty, allegiance, and subjection."
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> "*Sec. 12.* And this plainly appears by the prevailing opinions in the reign of King Edward IV., in whose reign the distinction between a King *de jure* and *de facto* seems first to have begun; and yet it was then laid down as a principle, and taken for granted in the arguments of Bagot's case, that a treason against Henry VI. while he was King, in compassing his death, was punishable after Edward IV. came to the Crown; from which it follows that allegiance was held to be due to Henry VI. while he was King, because every indictment of treason must lay the offence *contra ligeantiæ debitum*.
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> "*Sec. 13.* It was also settled that all judicial acts done by Henry VI. while he was King, and also all pardons of felony

and charters of denization granted by him, were valid; but that a pardon made by Edward IV., before he was actually King, was void, even after he came to the Crown."

"And by the 11th Henry VII., ch. 1, it is declared 'that all subjects are bound by their allegiance to serve their Prince and Sovereign Lord for the time being in his wars for the defence of him and his land against every rebellion, power, and might reared against him, &c., and that it is against all laws, reason, and good conscience that he should lose or forfeit any thing for so doing;' and it is enacted 'that from thenceforth no person or persons that attend on the King for the time being, and do him true and faithful allegiance in his wars, within the realm or without, shall for the said deed and true duty of allegiance *be convict of any offence*.'"

"*Sec. 15.* From hence it clearly follows: *First*, that every King for the time being has a right to the people's allegiance, because they are bound thereby to defend him in his wars, against every power whatsoever.

"*Sec. 16. Secondly*, that one out of possession is so far from having any right to allegiance, by virtue of any other title which he may set up against the King in being, that we are bound by the duty of our allegiance to resist him."

And these doctrines, if the Court please, have been recently acted upon and enforced by a learned Judge in the case of the United States *vs.* The General Parkhill, tried in Philadelphia, and published in the newspapers, although not yet issued in the regular volumes of Reports.

I need not tell you, gentlemen, that what is said there of the

King, applies to any other form of Government equally well, whether it be a republican form of Government, or whatever it may be. These doctrines belong to this country as well as they belong to England. They belong to every country which has adopted the common law; and what would be due to a King in the actual possession of the Government in England, under our statutes and decisions, and under the rules adopted here, would be equally due to a President of the United States in any part of the country in which we live.

I have only to call your attention, in that connection, in opening the defence, to what the condition of things was in the South at the time the acts charged in the indictment occurred. You will bear in mind there is no pretence in this case that any one of these prisoners had anything whatever to do with the initiation of this controversy,—with the overthrow or disappearance of the United States authority in those Confederate States, or with any act occurring anterior to the 2d of June, when this vessel, the Savannah, started upon her career. Nothing, so far, appears, and, in reality, nothing can be made to appear, to show any event, before that time, with which they were connected.

The question, then, is, What was the state of things existing in Charleston, and in the Confederate States, at that time? In the course of the evidence, we will lay that before you, in the completest form it can be laid. We will show you, by the official documents, by the messages of the President, by proclamations,

and by the Acts of Congress themselves, that there was not an officer of the United States exercising jurisdiction in one of these Confederate States—not a Judge, or Marshal, or District Attorney, or any other officer by whom the Government had been previously administered on the part of the United States. Every one of them had resigned his office. This new Government had been formed. It was the existing Government, which had replaced the United States in all these States, long anterior to the time that this vessel was fitted out and sailed from the port of Charleston; and upon these questions, whether that was a *de jure*

Конец ознакомительного фрагмента.