

C. L. Ch.]

In re BENNET G. BURLY.

[C. L. Ch.]

trial if the crime of which he is accused had been committed here?

Taking the evidence adduced against the prisoner, there seems to have been sufficient to warrant his committal. Then, has he shown by evidence what ought to relieve him from the charge?

Assuming, for the present, the position taken by the prisoner's counsel to be correct, that we, as belonging to a neutral nation, who have acknowledged that those who are contending against the recognized government of the United States are belligerents, by such acknowledgment have placed them as to all hostile acts against the United States government in the same position as if they were a recognized government; and, further, assuming for the present, that an enterprise to capture the steamer *Michigan* and release the prisoners confined on Johnson's Island, undertaken by twenty-five or thirty men, would, in the then status of affairs on Lake Erie and its vicinity, be a lawful and proper belligerent act, does the evidence on behalf of the prisoner show that he was engaged in such an enterprise?

The facts urged on his behalf, as appearing from the evidence, I understand are these:

That there was a large number of prisoners, between two and three thousand, confined on Johnson's Island, in Lake Erie, at the time the *Philo Parsons* steamer was captured by the party with which the prisoner was said to have been connected.

That the steamer *Michigan* was also stationed in the vicinity of that island.

That two of the party who guarded one of the witnesses told him that they intended to capture the United States steamer *Michigan*, to release their friends on Johnson's Island.

That the passengers of another small steamer called the *Island Queen*, captured by the party, were taken off and put in the cabin of the *Philo Parsons* under guard of armed men. That some of these passengers were United States soldiers. That subsequently the prisoner directed the men having the others in charge to march their prisoners down and put them into the hold, three at a time, and they were marched down under guard and put into the hold.

That when the boat was seized some one remarked that they were Confederate States soldiers who were doing it.

That the prosecutor at the time told some of the lady passengers of the boat that she was captured by rebels.

That the pilot of the boat stated that Bell, who was in command of those who seized the vessel, asked him if he was in charge of the *Philo Parsons*, and then stated to him that he (Bell) was a Confederate officer; that he seized the boat and took him (the pilot) prisoner; that he would be obliged to submit to their doings; if not he had arms, producing them, to compel him to do so. That the lady passengers of the captured steamers were put on shore, under a promise that they would not give the alarm for twenty-four hours, and that the male prisoners were sworn to secrecy.

That no other passenger or person on board the steamer than the prosecutor was deprived of money or property, and that the captors acted on the view, that having got the boat as a lawful

prize they were entitled to all that belonged to her, money as well as everything else.

That the men were officers and soldiers of, and acting under the orders of, the Confederate government, and that the acts and conduct of the prisoner have been assumed by that government.

And, that they hoisted the Confederate flag on the vessel after she had been captured.

On the other side, it was contended that having shown a taking of the money by force and violence, a *prima facie* case is made out. That so far from the facts set up showing that their enterprise was to capture the steamer *Michigan* and release the prisoners on Johnson's Island, they did not go within ten or twelve miles either of the steamer or Johnson's Island. That there is no reason given, nothing whatever shown, that if they ever really intended to embark in such an enterprise as is suggested, why it was abandoned.

That just before the prisoner or Bell took the money from the prosecutor, the latter asked them to permit him to take some promissory notes which were his private property, amounting to about \$2,000; that prisoner asked to see them, and after looking at them said he could not collect them, and gave them back to the prosecutor, and Bell then said, "we want your money," both having revolvers drawn at that time. On being shown a small quantity of money in a drawer, prisoner then said, "you have got more money, let's have it," and prosecutor then took a roll of bills, containing about \$90, out of his pocket and laid it on the desk, and Bell took part and the prisoner part—they took the money between them.

That some of the party on guard over the pilot of the vessel, asked him if a banker did not live on Grosse Isle, in the Detroit river. He replied that Ives lived there. They said, if it had not been so late they would go and rob him.

That the clothes of the pilot of the vessel were taken by some of the party, and that he wished one of them who had taken a coat of his to return it, but he refused to do so.

That when they arrived at Sandwich they took some of the furniture of the boat ashore.

That as to hoisting the Confederate flag, that was done after dark, and then only half-mast.

That the evidence to show that the prisoner was an officer of the belligerent power, as he contended he was, was not sufficient, and that the instrument called a manifesto does not show that this prisoner was directed to engage in the alleged enterprise, but rather that it was entrusted to belligerent officers generally, and that prisoner was one of those officers, but not that he was personally directed to undertake or engage in the enterprise. That the assuming of the act is equally equivocal. That the acts and conduct of all the officers engaged in the expedition, and especially those of the prisoner, are assumed, but it is a matter of doubt if they were engaged in the expedition, and they may have put that forward as a pretence, under cloak of which to commit robbery. That the instructions to the officers to undertake the expedition were to abstain from violating any of the laws of this country in relation to neutrality. That the prisoner, and those engaged with him, did not act on those instructions, but in disregard of our