

Philo Parsons. Here a promise of secrecy for twenty four hours, as to what had occurred, was exacted from the ladies, and an oath to that effect from the male passengers—all of whom were then liberated and put ashore. They were not prevented from taking their baggage, and it did not appear that, beyond their imprisonment, any one of them had been molested or his effects interfered with. Here the prisoner and Bell went to Ashley, in the cabin of the *Philo Parsons*, and holding their revolvers in their hands, demanded his money. In peril of his life he took from his pocket a roll of bills, amongst which was the \$20 bill in question, and which bills the prisoner and Bell took. They then also, in like manner, took about \$10 more found in the drawer, consisting partly of silver. All of this money was the property of Ashley and his co-partners, owners with him of the *Philo Parsons*. Ashley was then, about nine o'clock at night, put ashore at Middlebaes Island. The *Philo Parsons*, with the *Island Queen* fastened alongside, at once steered for Sandusky. After proceeding for about half an hour they set the *Island Queen* adrift, it was said scuttled. They were then distant from Sandusky about fourteen miles, by the route they were pursuing. Nichols, the mate, who had been detained in the hold a prisoner for two or three hours after leaving the island, was then called up. He found that they had got the boat into a pond. Subsequently he was directed to steer for Detroit River. He observed a Confederate flag on board. The wind was high. It was said amongst the party that they intended taking the *Michigan*, if they could, but that they had not made much by their coming down. Some of Nichols' clothes had been taken by them. On returning up the Detroit River, one of the party said it was well for some of the vessels then near by that they were in Canadian water, as otherwise they would have boarded them. Some of them asked Nichols if a banker did not reside at Grosse Isle. He replied yes, that one Ives did. It was then said, if it had not been so late they would have gone and robbed him. The boat was next morning, at Sandwich, abandoned by the party, and some of its furniture, which had been removed on shore, was also found there.

At the close of the case for the prosecution, the prisoner asked an adjournment in order to procure testimony on his behalf, and denied on oath the fact of having committed the robbery. To this the prosecution objected, contending that, under the treaty and the acts passed to give it effect, the Recorder was not to try the case, but merely to inquire as to probable cause. The Recorder held that he was bound, under the statute, to receive evidence as to "the truth of the charge," and admitted the evidence.

On behalf of the prisoner, evidence was given of his being a British born subject of her Majesty. He had been at the city of Richmond, in the State of Virginia, one of the Confederate States of America, in May, 1863, also in February and March, 1864, then appearing in the uniform of a Confederate soldier, having a badge of military rank; also of the fact of a military prison existing at Johnson's Island, containing from two to three thousand Confederate prisoners of war, and of one of the prisoners therein in September being then aware of an anticipated movement upon the place for their relief. A document, under the official seal of the Department of State

of the Confederate States of America, signed by Jefferson Davis and by Judah P. Benjamin, Secretary of State, dated at the city of Richmond, 24th December, 1864, was proved. This instrument recognizes the prisoner as an acting-master in the navy of the Confederate States of America, and alleges that to him, in September last, had been confided an enterprise for the taking of the steamer *Michigan* and the release of the prisoners at Johnson's Island, and that such enterprise had been authorised by the Confederate Government, and it closed in these words:—"And I do further make known to all whom it may concern, that in the orders and instructions given to the officers engaged in said expedition they were specially directed and enjoined to abstain from violating any of the laws and regulations of the Canadian or British authorities in relation to neutrality, and that the combination necessary to effect the purpose of said expedition must be made by Confederate soldiers, and such assistance as they might (you may) draw from the enemy's country." A document under the official seal of the Secretary of the Navy of the Confederate States, signed by the Secretary, S. R. Mallory, was proved. It certified a copy of an appointment of the prisoner, September 11th, 1864, to the office of an Acting-master in the Confederate navy.

This closed the evidence for the defence.

M. C. Cameron, Q. C., for the prisoner, claimed his discharge from custody, and contended that the Ashburton Treaty in no way applied to British subjects; but admitting that it did, argued that the prisoner had done no more than exercise a belligerent right, for which he had the authority of the Government of the Confederate States, and that whether the act was in the first instance authorized by that Government or subsequently adopted by it, the prisoner as a mere political refugee was not within the Treaty. He cited Wheaton's International Law, 6 Edn. 179; 1 Black. Com. 137; *Brown v. United States*, 8 Cranch. 133.

S. Richards, Q. C., for the United States, contended that what the prisoner did was to commit robbery, and was not justifiable as an act of war, and could not be and was not in fact ratified by the Government of the Confederate States. He cited Wheaton, part 4, cap. 2, s. 4, 5, p. 591 to 596, last ed.; Halleck, p. 412, 427, 456, 457, 458; 3 Phillimore, p. 74; Vattel, cap. 8, p. 165, 358, 359; *Reg. v. Tivnan*, 10 L. T. N. S. 499.

Robert A. Harrison, for the Canadian Government, argued that Burley and those with him had violated the neutral territory of Canada, and could not therefore be allowed to say in the courts of that country that what he did were acts of legitimate warfare, that under any circumstances the property of non-combatants in time of war was protected; that the taking of such property by violence from the person was robbery, and that evidence if any, to excuse the act, could only be weighed before a jury in the tribunals of the foreign country. He cited *Two Brothers*, 3 C. Robinson. 164; *Lucas v. Bunce*, 4 Am. Reg. 98; *In re Anderson*, 11 U. C. C. P. 60; *Reg. v. Tivnan*, 10 L. T. N. S. 499; *In re Bennett*, 11 L. T. N. S. 488; *In re Kaine*, 14 Howard U. S. 103, 137; the case of the *Chesapeake* in Nova Scotia; the case of *McLeod*, 6 Webster's Works, 247, S. C. 25 Wendell, 483.