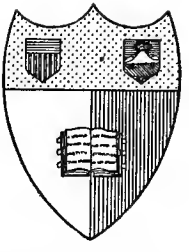

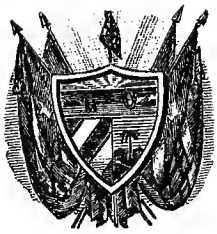

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WASHINGTON, D. C., JUNE 5TH, 1897.

EXCMO. SENOR

DON ENRIQUE DUPUY DE LOME,

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY OF H. C. M. THE KING OF SPAIN.

SIR: I HAVE THE HONOR TO TRANSMIT HEREWITH PRINTED COPIES OF A REPORT PREPARED AT YOUR REQUEST WITH SPECIAL REFERENCE TO THE LAWS OF THE UNITED STATES, AND PROCEEDINGS THEREUNDER, TO PREVENT AND PUNISH THE FITTING OUT OF VESSELS TO COMMIT HOSTILITIES, AND THE SETTING ON FOOT, PREPARING, OR PROVIDING THE MEANS FOR MILITARY EXPEDITIONS AND ENTERPRISES AGAINST THE LAWFUL GOVERNMENT OF SPAIN IN CUBA IN AID OF THE PRESENT INSURRECTION. THE PERIOD COVERED BY THIS REPORT IS FROM JULY 27, 1896, WHEN I SUBMITTED MY LAST REPORT, TO DATE.

THE FORMER REPORT WAS INTENDED TO REVIEW THE ATTITUDE OF THE GOVERNMENT OF THE UNITED STATES IN ALL ITS BRANCHES AND TOWARDS ALL NATIONS ON THE SUBJECT OF NEUTRALITY, AND TO APPLY THE PRINCIPLES SUCCESSFULLY ASSERTED BY THE UNITED STATES AGAINST GREAT BRITAIN TO THE DUTY OF VIGILANCE AND DILIGENCE IMPOSED UPON THE UNITED STATES BY EXISTING CONDITIONS, AND, INCIDENTALLY, THE LAWS OF THE UNITED STATES AND PROCEEDINGS THEREUNDER WERE DISCUSSED.

IN THE PRESENT REPORT I HAVE ADDRESSED MYSELF RATHER TO THE MUNICIPAL LAWS OF THE UNITED STATES

AND THEIR CONSTRUCTION BY THE COURTS OF THE UNITED STATES, AS FURNISHING THE MEANS AT THE COMMAND OF THE GOVERNMENT FOR THE FULFILMENT OF THE INTERNATIONAL DUTY HERETOFORE DISCUSSED, AND ADMITTED IN PRINCIPLE AT LEAST BY THE PROCLAMATIONS OF THE PRESIDENT.

THE GRAVE DOUBTS SUGGESTED BY THE JUDGES IN THE PROCEEDINGS AGAINST THE "ITATA" IN 1891–2 AS TO WHETHER OUR NEUTRALITY LAWS HAD ANY APPLICATION TO AN INSURRECTION WHERE NO STATE OF BELLIGERENCY HAD BEEN RECOGNIZED, HAVE BEEN FINALLY SET AT REST BY THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN THE CASE OF THE "THREE FRIENDS," HOLDING OUR NEUTRALITY LAWS APPLICABLE TO THE UNRECOGNIZED CUBAN INSURGENTS IN THE ACTUAL INSURRECTION.

IN APPENDIX 2, PART 2, I HAVE THOUGHT PROPER TO REPRINT IN FULL FOR THE PRESENT REPORT ALL THE PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN THE "THREE FRIENDS" CASE FOR THE SAME REASONS WHICH INDUCED ME TO REPRINT IN AN APPENDIX TO THE LAST REPORT THE FULL PROCEEDINGS IN THE CASE OF THE UNITED STATES *vs.* WIBORG.

IT IS NOTEWORTHY THAT THE SUPREME COURT HAS FOR THE SECOND TIME RECOGNIZED THE EXTRAORDINARY IMPORTANCE OF OUR NEUTRALITY LAWS, AND THEIR PROPER CONSTRUCTION, WITH REFERENCE TO THE EXISTING CUBAN INSURRECTION BY HEARING THE CASE OF THE "THREE

Friends" on a day specially set during its usual February recess, and by promptly deciding the case on the reassembling of the Court on the first day of March, 1897.

This case against the "Three Friends" is pending on the merits in the District Court at Jacksonville, Florida. Another proceeding under the same law is pending against the same vessel for a later hostile expedition. The "Laurada" has been libelled, and is in custody at Wilmington, Delaware, and it is hoped that proceedings against the "Dauntless," growing out of the facts and circumstances witnessed by officers of the United States Treasury and United States Navy may lead not only to her condemnation, but to the seizure and condemnation of the arms and munitions provided for the hostilities which the "Dauntless" was intended to commit.

While, therefore, the practical results of the decision of the Supreme Court in the "Three Friends" case have not been as immediate as might well have been expected, it has a far-reaching importance, the ultimate consequences of which are yet to be seen.

I have the honor to be, Sir,

Your Obedient Servant,

CALDERON CARLISLE,

Legal Adviser of the Spanish Legation.

REPORT

TO THE

SPANISH MINISTER,

DON ENRIQUE DUPUY DE LOME

WITH SPECIAL REFERENCE TO THE

LAWS OF THE UNITED STATES, AND PROCEEDINGS THEREUNDER, TO PREVENT AND PUNISH THE FITTING OUT OF VESSELS TO COMMIT HOSTILITIES, AND THE SETTING ON FOOT, PREPARING OR PROVIDING THE MEANS FOR MILITARY EXPEDITIONS AND ENTERPRISES AGAINST THE LAWFUL GOVERNMENT OF SPAIN IN CUBA, AND IN AID OF THE PRESENT INSURRECTION.

ACCOMPANIED BY THREE APPENDICES.

CALDERON CARLISLE,

LEGAL ADVISER OF THE SPANISH LEGATION.

WASHINGTON, D. C., JUNE, 1897.

TABLE OF CONTENTS OF THE REPORT.

TABLE OF CONTENTS OF APPENDICES.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

INTRODUCTION.

The following Report has been prepared with the purpose of showing how far the laws of the United States, and proceedings thereunder, prevent and punish the fitting out of vessels to commit hostilities, and the setting on foot, or preparing, or providing the means for, military expeditions or enterprises against the lawful Government of Spain in Cuba, in aid of the present insurrection.

The neutrality laws of the United States as construed by their courts furnish the chief means at the command of the Government of the United States for the fulfilment of the international duty, heretofore discussed in my previous Report, and admitted, in principle, at least, by the spirit and letter of the laws themselves and the proclamations of the President.

The matter collected in the Appendices sets forth, not only the construction of these laws by our courts, but illustrates the administration of those laws. And in this Introduction, before proceeding to refer to particular cases, it seems to me proper to present some general considerations with reference to the relations of the people of the United States to their own laws, self-imposed, and particularly to the neutrality laws.

The American People's relation to Law in general.

Beginning with 1876, there have been a series of Centennial Celebrations in the United States, in the course of which the adoption of the Constitution, the inauguration of the first President, and the establishment of the Supreme Court of the United States have among other events been commemorated. The addresses of the Chief Justice and Senior Associate Justices of the Supreme Court of the United States on some of these occasions have been preserved in the official reports of the Supreme Court. Perhaps I cannot better

approach the subject in hand than by presenting pertinent extracts from these addresses.

Mr. Justice Field, appointed by President Lincoln in 1863, and who is now the Senior Associate Justice of the Supreme Court of the United States, in his address at the Centennial Celebration of the organization of the court (134 U. S.), speaking of our Constitution, says:

> "Though it received definite form from the labors of the Convention of 1787, it was, in its division of governmental powers into three departments, and in its guaranties of private rights, the product of centuries of experience in the government of England. It had its roots deep in the past, as all enduring institutions have. The colonists brought with them the great principles of civil liberty, which had been established there after many a conflict with the Crown, and which were proclaimed in Magna Charta and in the Declaration of Rights. Our country was in this respect the heir of all the ages."

And Mr. Justice Miller, then the Senior Associate Justice of the same court, in his memorial address on the adoption of the Constitution (135 U. S.) pays this just tribute to the American people:

> "Do I claim for the Constitution whose creation we celebrate today the sole merit of the wonderful epitome which I have presented to you of the progress of this country to greatness, to prosperity, to happiness and honor? Nay I do not. . . . I should fail of a most important duty if I did not say on this public occasion that no amount of wisdom in a Constitution can produce wise Government, unless there is a suitable response in the spirit of the people. The Anglo-Saxon race from whom we inherit so much that is valuable in our character as well as our institutions, has been remarkable in all its history for a love of law and order. While other peoples, equally cultivated, have paid their devotion to the man in power as representative of the law which he enforces, the English people and we, their descendants, have venerated the law itself, looking past its administrators and giving our allegiance and our obedience to the principles which govern organized society. It has been said that a dozen Englishmen or Americans thrown on an uninhabited island would at once proceed to adopt a code of laws for their government and elect the officers who were to enforce them. And certainly this proposition is borne out by the early history of our emigrants to California, where every mining camp organized into a political body and made laws for its own government, which were so

good that Congress adopted them until they should be repealed or modified by statute.

"I but repeat the language of the Supreme Court of the United States when I say that in this country the law is supreme. No man is so high as to be above the law. No officer of the Government may disregard it with impunity. *To this inborn and native regard for law as a governing power we are indebted largely for the wonderful success and prosperity of our people for the security of our rights.*"

And in his scholarly address at the commemoration of the inauguration of George Washington, delivered before the two Houses of Congress, December 11, 1889 (see Appendix to 132 U. S.), the present Chief Justice of the United States, speaking of a foreign writer who prophesied the ruin of our country by some Cæsar or Napoleon, adds the following thought as to the true character of our institutions and people:

"The brilliant essayist did not comprehend the character of our fundamental law . . . nor realize the practical operation of a governmental scheme *intended to secure* THAT SOBER SECOND THOUGHT WHICH ALONE CONSTITUTES PUBLIC OPINION IN THIS COUNTRY, and which makes of Government by the people a Government strong enough, in the language of the address, to 'withstand the enterprise of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property,' without which 'liberty is little less than a name.'"

In the American people there is, as stated by Judge Miller, an "inborn and native regard for law;" law is for them the embodiment at once of liberty and self-government. The faithful, fearless and impartial administration of the law is necessary to the safety of our institutions. A lax or partial administration of the law is more demoralizing to a community than the breaking of the laws. It makes no difference what the subject of the law may be, all constitutional laws have the same sanction, and the spectacle of a law set at naught not only by the individuals who break it but by grand and petit juries who administer it under the influence of a sentiment which tolerates such a state of affairs and which extends to the bench itself is one to awaken alarm in the breast of every true American.

The Nihilist would have no law to regulate his own or any one else's conduct or desires. The American is willing that his own conduct and rights and those of his fellow citizens should be wholly regulated by law—which is the bulwark of our liberty—a place of refuge within—a sure defense without. If a breach is made in this

in a time of popular excitement the "sober second thought" of the American people will surely lead them to close it up stronger than before—and when the day shall come that the real public opinion of this country can tolerate a deliberate defiance of law in any part of it, a dreadful day will have dawned for the Republic.

THE AMERICAN PEOPLE'S RELATION TO THEIR NEUTRALITY LAWS.

The first Chief Justice of the United States, in his charge to the Grand Jury, delivered in the city of Richmond in May, 1793, before we had any statute on the subject of neutrality, uses the following language:

> "*That citizens and nations should use their own as not to injure others, is an ancient and excellent maxim; and is one of those plain precepts of common justice which it is the interest of all, and the duty of each, to obey, and that not only in the use they may make of their property, but also of their liberty, their power and other blessings of every kind.*
>
> "To restrain men from violating the rights of society and of one another, and impartially to give security and protection to all, are among the most important objects of a free government. I say a free government, because in those that are not free, these objects being in certain respects secondary to others are less regarded and less perfectly provided for. *Where the conduct of the citizens is regulated by the laws made by themselves and for their common benefit, and executed by men deriving authority from, and responsible to them, the most regular and exact obedience to those laws is to be expected, required and rendered.* By their constitution and laws the people of the United States have expressed their will, and their will, so expressed, must sway and rule supreme in our republic. It is in obedience to their will, and in pursuance of their authority, that this court is now to dispense their justice in this district; and they have made it your duty, gentlemen, to inquire whether any and what infractions of their laws have been committed in this district, or on the seas, by persons in or belonging to it. Proceed, therefore, to inquire accordingly, and to present such as either have, or shall come to your knowledge.
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> . . . . . .
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> "The peace, prosperity and reputation of the United States will always greatly depend on their fidelity to their engagements, and every virtuous citizen (for every citizen is a party to them) will concur in observing and executing them with honor and good faith, and that whether they be made with nations respectable and important, or with nations weak and

inconsiderable, our obligation to keep our faith results from our having pledged it, and not from the character or description of the state or people, to whom, neither impunity nor the right of retaliation can sanctify perfidy; for although perfidy may deserve chastisement, yet it can never merit imitation."

. . . . . .

"*The respect which every nation owes to itself imposes a duty on this Government to cause all its laws to be respected and obeyed, and that not only by its proper citizens, but also by those strangers who may visit and occasionally reside within its territory.*"

. . . . . .

"Being a free people, we are governed only by laws, and those of our own making—these laws are rules for regulating the conduct of individuals, and are established according to, and in pursuance of, that contract which each citizen has made with the rest, and all with each. He is not a good citizen who violates his contract with society; and when society execute their laws, they do no more than what is necessary to constrain individuals to perform that contract, on the due operation and observance of which the common good and welfare of the community depend; for the object of it is to secure to every man what belongs to him, as a member of the nation; and by increasing the common stock of property, to augment the value of his share in it. Most essentially, therefore, it is the duty and interest of us all that the laws be observed and *irresistibly* executed."

Nearly half a century later Mr. Justice McLean, Associate Justice of the Supreme Court of the United States, in a charge to the grand jury during the Canadian Insurrection in 1838, thus reviews the subject:

"When our citizens, generally, shall cease to respect the laws, and the high duties they owe their own government, there is but a slender ground of hope that our institutions can be long maintained.

"An obedience to the laws is the first duty of every citizen. It lies at the foundation of our noble political structure; and when this great principle shall be departed from with the public sanction, the moral influence of our government must terminate.

"If there be any one line of policy in which all political parties agree, it is, that we should keep aloof from the agitations of other governments. That we shall not intermingle our national concerns with theirs. And much more,

that our citizens shall abstain from acts which lead the subjects of other governments to violence and bloodshed.

"We have a striking instance of the wisdom of this policy in the early history of our government.

"During the administration of our first President the French Revolution burst forth and astonished the civilized world. All Europe combined in arms against Republican France—that France which had mingled her arms and her blood with ours in our struggle for independence.

"That this country should deeply sympathize with so noble, brave and generous an ally, in such a struggle, was natural. Bursts of enthusiasm were witnesses in her behalf, in almost every part of our country, and an ardent desire was evinced to make common cause with her in favor of liberty. And this was claimed of our country as a debt of gratitude, and on the ground of treaty stipulations.

"Had this tide of popular feeling, which threatened to bear down everything in its course, not been checked, our destinies would have been united with those of France. We might have participated in her military glory, and in the renown of her heroes. And the struggles, in which we would have been involved, might have given birth to a race of heroes in our own country, whose deeds of chivalry would have been celebrated in history. But our country would have been wasted by war and rapine; and the pen of the historian, which recorded the deeds of our heroes, would, also, have told, in all probability, that our country, like France, was driven to take refuge from the turbulence of party factions, under a splendid military despotism.

"Fortunately for the country, Washington lived, and the veneration in which his name was held, and the authority he exercised, mainly contributed to check the excitement, and preserved the peace and lasting prosperity of the country.

"The struggle of the people of South America, against the oppressions of their own government, again awakened the sympathies of our country, and produced a strong desire with many to unite our fortune with theirs. But this feeling was controlled, and the neutrality and peace of our country were preserved.

"A government is justly held responsible for the acts of its citizens. And if this government be unable or unwilling to restrain our citizens from acts of hostility against a friendly power, such power may hold this nation answerable, and declare war against it. Every citizen is, therefore, bound by the regard he has for his country, by his reverence for its laws, and by the calamitous consequences of war, to exert his

influence in suppressing the unlawful enterprises of our citizens against any foreign and friendly power.

"*History affords no example of a nation or people, that uniformly took part in the internal commotions of other governments, which did not bring down ruin upon themselves. These pregnant examples should guard us against a similar policy, which must lead to a similar result.*

"In every community will be found a floating mass of adventurers, ready to embrace any cause, and to hazard any consequences which shall be likely to make their condition better. And, it is believed, that a large portion of our citizens, who have been engaged in military enterprises against Canada, are of this description.

"That many patriotic and honorable men were at first induced, by their sympathies, to countenance the movement, if not to aid it, is probable. But when these individuals found that this course was forbidden by the laws of their country, and by its highest interests, they retraced their steps. But, it is believed, that there are many who persevere in their course, in defiance of the law and the interests of their country. Such individuals might be induced to turn their arms against their own government, under circumstances favorable to their success.

"These violators of the law should not escape with impunity. The aid of every good citizen will be given to arrest them in their progress, and bring them to justice. They show themselves to be enemies of their country, by trampling under foot its laws, compromising its honor, and involving it in the most serious embarrassment with a foreign and friendly nation. It is, indeed, lamentable to reflect, that such men, under such circumstances, may hazard the peace of the country.

"If they were to come out in array against their own government, the consequences to it would be far less serious. In such an effort, they could not involve it in much bloodshed, or in a heavy expenditure; nor would its commerce and general business be materially injured. But a war with a powerful nation, with whom we have the most extensive relations, commercial and social, would bring down upon our country the heaviest calamity. It would dry up the sources of its prosperity, and deluge it in blood.

"The great principles of our republican institutions can not be propagated by the sword. This can be done by moral force and not physical.

"If we desire the political regeneration of oppressed nations, we must show them the simplicity, the grandeur and the freedom of our own Government. We must

recommend it to the intelligence and virtue of other nations by its elevated and enlightened action, its purity, its justice and the protection it affords to all its citizens, and the liberty they enjoy, and if in this respect we shall be faithful to the high bequests of our fathers, to ourselves and to posterity, we shall do more to liberalize other governments and emancipate their subjects than could be accomplished by millions of bayonets. . . .

"*But if we trample under our feet the laws of our country, if we disregard the faith of treaties and our citizens engage without restraint in military enterprises against the peace of other Governments, we shall be considered and treated—and justly, too—as a nation of pirates.*"

The Law of our Foreign Relations.

When the United States, as a nation, were young and weak, measured by ordinary standards, they developed in their statesmen and people a strength and influence which the world has since fully recognized, and which has contributed more than anything else to the progress, prosperity and greatness of our country.

This strength and influence at home and abroad was the "inborn and native regard for law" of which Mr. Justice Miller speaks. At home the people, both private citizens and public servants, thus showed their capacity for self-government. Abroad we let it be early understood that the independence which we had won was guaranteed not only to us but to all other nations, and from the beginning we fearlessly asserted and respected the foundation principle of international law, the absolute equality and independence of nations.

In our dealings with other nations, we asserted and maintained our rights under laws imposed by the common consent of mankind on principles which could not be safely denied, and of which the assertion and maintenance tended to our own safety and honor. In 1812 we fearlessly went to war with Great Britain on the question of the rights of our ships and citizens on the high seas. In 1822, with equal fearlessness, we insisted against Russia on the freedom of the seas themselves.

These matters concerned us, and it was our right and duty to take a position. Our foreign policy was based on right and duty, law and honor. No low considerations of selfish gain or conquest were admitted. No high, but misguided, sentiments in favor of propagating liberty by the sword or of sacrificing the obligations of present friendship to exaggerated estimates of duties growing out of the past were suffered to embroil us in the wars of Europe or in the struggles of Spain and Portugal with their colonies.

After we emerged from our civil war, though the victorious armies of the Federal Government were scarcely disbanded and a

successful military chieftain was President, though popular indignation at the unfriendly course of Great Britain towards the North during the war was fanned by press and politicians, nevertheless while a consistent attitude was firmly maintained in our diplomatic correspondence, the result was the great treaty of May 8, 1871, full of peaceful settlements of vexed questions by various tribunals, culminating with the great Court of Nations at Geneva.

During this same period an insurrection raged in Cuba. This lasted from 1868 to 1878, but General Grant and Mr. Fish firmly maintained the traditional policy of the United States which had successfully kept under the filibustering spirit in the South in early days. And during the present insurrection the agitation in the press and in Congress have failed to lead the United States into any departure from the essential principles of foreign policy established at the foundation of the Government.

This policy, founded and maintained by the great character, patriotism and ability of General Washington, the first President of the United States, is thus epitomized in his Farewell Address:

> "Observe good faith and justice towards all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct, and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it?"

And the same spirit breathes in President McKinley's inaugural address:

> "It has been the policy of the United States since the foundation of the Government to cultivate relations of peace and amity with all the nations of the world and THIS ACCORDS WITH MY CONCEPTION OF OUR DUTY NOW. We have cherished the policy of NON-INTERFERENCE WITH THE AFFAIRS OF FOREIGN GOVERNMENTS, wisely inaugurated by Washington, keeping ourselves free from entanglement either as allies or foes, CONTENT TO LEAVE UNDISTURBED WITH THEM THE SETTLEMENT OF THEIR OWN DOMESTIC CONCERNS. It will be our aim to pusue a firm and dignified foreign policy, which shall be just, impartial, ever watchful of our national honor, and always insisting upon the enforcement of the lawful rights of American citizens everywhere. Our diplomacy should seek nothing more, and accept nothing less than is due us. We want no wars of conquest, we must avoid the temptation of territorial aggression."

This is the announcement to his fellow-countrymen by the responsible Executive of his view of the question. Fresh from the people elected by a large majority, he was confronted with difficult domestic questions, but as well with the Cuban question, which had been stirred to its depths by press and politicians; as to which the firm and patriotic attitude of his predecessor, of opposite political faith, had been derided, in intemperate language, and by men of both parties. There was every temptation to the President if he believed apparent sentiment to be real to make a contrast between his attitude and that of his predecessor; even in doubt there was a strong temptation to test the reality of the sentiment in favor of interference by the United States in the Cuban insurrection.

The inaugural address is not an official deliverance. It is a customary address not provided for by law, and is the personal announcement of the President's policy. But it is not safe or reasonable to conclude that the President ignored all questions of party politics and public opinion and simply followed the dictates of his own mind and heart as to what was prudent and honorable in our foreign relations.

On the contrary the fair inference is that while the President did have very clear convictions as to what was the duty of an American statesman, because he had seen that the heeding of the keynote struck by Washington had maintained for us from the beginning, respect abroad and self respect at home, he must nevertheless have been convinced that there was a false public sentiment to be ignored, and a true one on the support of which he might count; in fine that the way of duty as a patriot and a party leader lay in the safe and honorable path traced by General Washington. And thus it is that after one hundred years William McKinley, President of the United States, in his inaugural, echoes the sentiments of the first President in his farewell address.

If the President needed confirmation of the correctness of his views it came in the effect of the inaugural throughout the country, extending even to a calming of the press, the politicians and the excited Cuban sympathizers. That there has been a recurrence of excitement in the Senate is easily to be accounted for by the history of the agitation in that body; that no practical results, inconsistent with the position announced in President McKinley's inaugural have followed, is nevertheless a fact.

I.

Attitude of the Executive from the Date of the Last Report to March 4th, 1897.

The Second Neutrality Proclamation.

On the 27th of July, 1896, the President issued his second proclamation, which will be found in Appendix II, Part I, pages 30–31, of the present Report.

The President called attention to his previous proclamation, to the continuance of the insurrection, and to the fact that since the date of the previous proclamation the—

> "neutrality laws of the United States have been the subject of authoritative exposition by the judicial tribunal of last resort; and it has thus been declared that any combination of persons organized in the United States for the purpose of proceeding to and making war upon a foreign country with which the United States are at peace, and provided with arms to be used for such purpose, constitutes a military expedition or enterprise within the meaning of said neutrality laws, and that the providing or preparing of the means for such 'military expedition or enterprise,' which is expressly prohibited by said laws, includes furnishing or aiding in transportation for such military expedition or enterprise."

Wiborg, the captain of a vessel furnishing such transportation, had been already convicted—and Hart the owner of another vessel has been since convicted.

In the case of the United States *vs.* Wiborg, which was an indictment under Section 5286, the Supreme Court pointedly reaffirms the law of evidence as to the conspiracy to violate law, which makes what was said or done by any of the co-conspirators evidence against all the rest, and the President in his proclamation calls attention to the express enactment of our statute (Rev. Stat., Sec. 5440), providing that if two or more persons conspire to commit an offense against the United States any act of one conspirator to effect the object of such conspiracy renders all the conspirators liable to fine and imprisonment.

In the first proceeding during the present insurrection under Section 5286, the United States *vs.* Pena et al., at Wilmington, Delaware, in September, 1895, the indictment contained conspiracy counts framed under Section 5440, but these counts were not pressed at the trial. And, indeed, the principal conspirators, Colonel Nunez and Gonzalo de Quesada, were not indicted.

No indictments under the conspiracy law, Section 5440, have been found in New York or Philadelphia. But in Baltimore, in February of the present year, an indictment was found against Carlos Roloff, Joseph J. Luis, and John T. Smith, which is found in Appendix III, Part III, pages 1 to 5, for conspiring to send off the expedition carried by the steamer Woodall, which sailed from Baltimore in July, 1895. Roloff and Luis were arrested and held to bail for trial, but Luis alone was brought to trial, Roloff and Smith being fugitives from justice, Roloff having forfeited his bail and gone to Cuba on the Laurada expedition of March of this year, and Smith never having been arrested.

PRESIDENT CLEVELAND'S LAST ANNUAL MESSAGE.

President Cleveland, in his Message of December, 1896, speaking of the relation of the United States to the Cuban insurrection used the following language:

"The United States has nevertheless a character to maintain as a nation, which plainly dictates that right and not might should be the rule of its conduct. Further, though the United States is not a nation to which peace is a necessity, it is in truth the most pacific of powers, and desires nothing so much as to live in amity with all the world. Its own ample and diversified domains satisfy all possible longings for territory, preclude all dreams of conquest, and prevent any casting of covetous eyes upon neighboring regions, however attractive. That our conduct towards Spain and her dominions has constituted no exception to this national disposition is made manifest by the course of our Government, not only thus far during the present insurrection, but during the ten years that followed the rising at Yara in 1868. No other great power, it may safely be said, under circumstances of similar perplexity, would have manifested the same restraint and the same patient endurance.

"IT MAY ALSO BE SAID THAT THIS PERSISTENT ATTITUDE OF THE UNITED STATES TOWARDS SPAIN IN CONNECTION WITH CUBA, UNQUESTIONABLY EVINCES NO SLIGHT RESPECT AND REGARD FOR SPAIN ON THE PART OF THE AMERICAN PEOPLE. THEY IN TRUTH DO NOT FORGET HER CONNECTION WITH THE DISCOVERY OF THE WESTERN HEMISPHERE, NOR DO THEY UNDERESTIMATE THE GREAT QUALITIES OF THE SPANISH PEOPLE, NOR FAIL TO FULLY RECOGNIZE THEIR SPLENDID PATRIOTISM AND THEIR CHIVALROUS DEVOTION TO THE NATIONAL HONOR.

"THEY VIEW WITH WONDER AND ADMIRATION THE CHEERFUL RESOLUTION WITH WHICH VAST BODIES OF MEN ARE SENT ACROSS THOUSANDS OF MILES OF OCEAN, AND AN ENORMOUS DEBT ACCUMULATED, THAT THE COSTLY POSSESSION OF THE GEM OF THE ANTILLES MAY STILL HOLD ITS PLACE IN THE SPANISH CROWN."

. . . . . .

"Many Cubans reside in this country and indirectly promote the insurrection through the press, by public meetings, by the purchase and shipment of arms, by the raising or funds, and by other means, which the spirit of our institutions and the tenor of our laws do not permit to be made the subject of criminal prosecutions. SOME OF THEM, THOUGH CUBANS AT HEART AND IN ALL THEIR FEELINGS

AND INTERESTS, HAVE TAKEN OUT PAPERS AS NATURALIZED CITIZENS OF THE UNITED STATES, A PROCEEDING RESORTED TO WITH A VIEW TO POSSIBLE PROTECTION BY THIS GOVERNMENT, AND NOT UNNATURALLY REGARDED WITH MUCH INDIGNATION BY THE COUNTRY OF THEIR ORIGIN."

. . . . . .

"It follows from the same causes that the United States is compelled to actively police a long line of seacoast against unlawful expeditions, the escape of which the utmost vigilance will not always suffice to prevent.

. . . . . .

"It would seem that if Spain should offer to Cuba genuine autonomy—a measure of home rule, which, WHILE PRESERVING THE SOVEREIGNTY OF SPAIN, would satisfy all rational requirements of her Spanish subjects—there should be no just reason why the pacification of the island might not be effected on that basis. Such a result would appear to be in the true interest of all concerned. It would at once stop the conflict which is now consuming the resources of the island and making it worthless for whichever party may ultimately prevail. IT WOULD KEEP INTACT THE POSSESSIONS OF SPAIN WITHOUT TOUCHING HER HONOR WHICH WILL BE CONSULTED RATHER THAN IMPUGNED, BY THE ADEQUATE REDRESS OF ADMITTED GRIEVANCES. It would put the prosperity of the island and the fortunes of its inhabitants within their own control, WITHOUT SEVERING THE NATURAL AND ANCIENT TIES WHICH BIND THEM TO THE MOTHER COUNTRY, and would yet enable them to test their capacity for self government under the most favorable conditions." *

THE QUESTION OF RECOGNITION OF BELLIGERENCY OR INDEPENDENCE OF THE CUBAN INSURGENTS.

It is unnecessary and inexpedient in this Report to enter into any detail with reference to the agitation during Mr. Cleveland's Administration of the question of the recognition of the belligerency or independence of the Cuban insurgents, and it is sufficient to note that the United States, notwithstanding this agitation, did not accord any recognition to the insurgents.

*Senor Rafael Montoro, a native of Cuba, one of the leaders of the Autonomist Party and a member of the Cortes for the island, conjointly with Senor Del Cueto, another prominent member of the Autonomist Party, thus speaks of the reforms which have been voluntarily offered to Cuba by the mother country. "We believe that the above measure contains all the essential elements of self government and that the amendments and extensions in scope that it may require in order to reach all the development possible within the national constitution may well be left to the action of time, of public opinion and of local initiative, when, peace being restored, it will become possible for them to manifest themselves authoritatively."

The Effect of Belligerency.

In view, however, of the misapprehension of the effect of a recognition of belligerency, shown not only in our press but in more serious writings, it seems well to touch briefly on this point:

Every duty now imposed on the United States by the law of nations and by their own neutrality laws with reference to the operations of the Cuban insurgents in American territory, whether as to vessels or military expeditions or enterprises, would remain absolutely unaffected by the recognition of belligerency. In these matters the insurgents would not gain a single advantage under the law of nations or under the municipal laws of the United States.

It is true that an obligation of neutrality towards the insurgents would for the first time arise, but this would only prevent Spain from specially adapting, in whole or in part, vessels for warlike use, or from setting on foot military expeditions or enterprises within the territory of the United States. She could still purchase arms and munitions in the United States "*openly, and transport them in the ordinary course of commerce.*"

On the other hand, Spain would gain a distinct advantage in the exercise of rights of war on the high seas—THE RIGHT OF BLOCKADE—affecting all the commerce of the United States with Cuba—and THE RIGHT OF SEARCH AND SEIZURE ON THE HIGH SEAS—affecting every vessel flying the flag of the United States.

On this very subject of the effect of a recognition of the belligerency of the Cuban insurgents, the Supreme Court of the United States has spoken in the "Three Friends" case after reaffirming its conclusion that the operation of our neutrality laws (Section 5283) was not dependent on the existence of belligerency:

> "Any other conclusion rests on the unreasonable assumption that the act is to remain ineffectual unless the Government incurs the restraints and liabilities incident to an acknowledgment of belligerency; ON THE ONE HAND PECUNIARY DEMANDS, *reprisals or even war may be the consequence of failure in the performance of obligations towards a friendly power, while,* ON THE OTHER, *the recognition of belligerency involves the* RIGHTS OF BLOCKADE, VISITATION, SEARCH AND SEIZURE OF CONTRABAND ARTICLES ON HIGH SEAS *and abandonment of all claims for reparation on account of damages suffered by our citizens from the prevalence of warfare.*"

It was to a nation which had recognized the belligerency of the Confederacy that the United States suggested the Rules which were adopted in the Treaty of Washington, speaking of which the Case of the United States at Geneva, p. 159, contains the following:

> "The neutral is required by the second clause of the first Rule of the Treaty to prevent the departure from its juris-

diction of any vessel intended so to cruise or carry on war, such vessel having been *specially adapted in whole or in part within such jurisdiction to warlike use.* The Tribunal of Arbitration probably will not have failed to observe that a new term is employed here. In the first clause of the first rule the obligation of the neutral is limited to the prevention of the 'fitting out, arming and equipping' the vessel. In the second clause the language is much broader. A vessel which has been '*specially adapted, in whole or in part, to warlike use*' *may not be permitted to depart.* The reasons for this change may probably be found in the different interpretations which have been put by the Executive and Judicial Departments of the two Governments upon the words 'fitting out,' and 'equipping,' and in the desire of the negotiators of the treaty to avoid the use of any words that could be deemed equivocal."

The Case thus speaks of the relative situation of the belligerents during our Civil War (p. 311):

> "It is in vain to say that both parties could have done the same thing. The United States were under no such necessity. If they could not manufacture at home all the supplies they needed, they were enabled to make their purchases *abroad openly, and to transport them in the ordinary course of commerce.* It was the insurgents who, unable to manufacture at home, were driven to England for their entire military supplies, and who, *finding it impossible to transport those supplies in the ordinary course of commerce, originated a commerce* for the purpose."

We contended that the obligation of neutrality in the case of belligerency could not be eluded by a fraudulent commerce, "by a fraudulent attempt of the offending vessel to evade the provisions of the local municipal law," and we cited the language of the Supreme Court of the United States in the case of the "Gran Para," 7 Wheat., p. 471.

In that case the arms and ammunition were taken as *cargo* and the men shipped as for an ordinary voyage. But the court said:

> "That the *arms and ammunition* were cleared out *as cargo* cannot vary the case nor is it thought to be material that the men were enlisted as for a common mercantile voyage. *There is nothing resembling a commercial adventure in any part of the transaction.*"

In this same case Chief Justice Marshall, speaking of the contention that the fitting out of the vessel in Baltimore was a commercial venture; that the hostile character was only assumed at La

Plata, and no captures having been made on the way out, the offense was there deposited, says:

> "If this were to be admitted in such a case as this the laws for the preservation of our neutrality would be completely eluded so far as the enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and reenlisting their crew to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. THIS WOULD, INDEED, BE A FRAUDULENT NEUTRALITY, DISGRACEFUL TO OUR OWN GOVERNMENT, AND OF WHICH NO NATION WOULD BE THE DUPE."

The Monroe Doctrine and Cuba.

It may be well also to correct a misapprehension which might grow out of Senator Cameron's widely circulated "Report on the subject of the Recognition of Cuban Independence," as to the celebrated Monroe Doctrine, and its relation to Cuba.

President Monroe, in his Message of December 2, 1823, used the following language:

> "The political system of the Allied Powers is essentially different . . . from that of America. . . . We owe it therefore to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part TO EXTEND their system to any portion of this hemisphere as dangerous to our peace and safety.
>
> "WITH THE EXISTING COLONIES OR DEPENDENCIES OF ANY EUROPEAN POWER WE HAVE NOT INTERFERED AND SHALL NOT INTERFERE. But with the governments who have declared their independence and maintained it, and whose independence we have, on GREAT CONSIDERATION and on JUST PRINCIPLES, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States."

In Mr. Cameron's Report to the Senate, of December 21, 1896, 54th Congress, 2d session, No. 1160, page 16, he quotes from this Message of President Monroe only that part which refers to the recognition of the independence of the South American Republics.

It is true that the report is entitled "Recognition of Cuban Independence," but the quotation occurs in that part of the Report which is devoted to the history of intervention. The force, dignity and consistency of President Monroe's original position, which has always been, in all its parts, supported by the United States, is lost by the omission of the brave warning to the Allied Powers confined to the EXTENSION of their system, and the simultaneous frank announcement that the United States has not and will not interfere with the existing colonies or dependencies of any European power.

Mr. Cameron's Report deals with the history of European intervention, in the cases of Greece, 1821–1827; Belgium, 1830; Poland, 1831; Hungary, 1849; States of the Church, 1850, and the Ottoman Empire, 1878. Asia is dismissed in a few lines, stating the conclusion that the entire fabric of European supremacy there rests on the right of intervention, and when the Report comes to discuss America, 1822, 1823, the distinguished author cites no instance of anything like intervention by the United States, except in pursuance of the Monroe Doctrine, which was directed against extension by European powers on this continent, but included the policy of non-interference of the United States with existing European colonies and within two years after President Monroe's Message the United States interposed its friendly offices, not to aid, but to prevent, a revolution in Cuba, which was planned by the newly recognized States of Colombia and Mexico. (Cameron's Report, p. 23.)

The United States has always let it be understood on the one hand that she would not interfere with the lawful Spanish authority in the Island of Cuba, and on the other hand that her own interests would not permit the transfer of that Island to any other European power. In addition to the frustration of the designs of the then newly organized republics of Mexico and Columbia in 1825, mentioned above, the filibustering spirit which so violently agitated the southern portion of this country before the war was successfully repressed, the long strain of the ten years' insurrection was successfully withstood, and the shorter but more acute trial of strength between the press and the politicians on the one hand and two Executives of opposite political faith, relying upon the sober second thought of the American people, which, to use the language of Chief Justice Fuller, "alone constitutes public opinion in this country," has resulted in a signal victory for the latter.

MILITARY EXPEDITIONS AND ENTERPRISES TO COMMIT HOSTILITIES IN CUBA.

From the issuance of the President's second proclamation, which appeared very shortly after the report which the undersigned had the honor to make in July, 1896, the vigilance and activity of the Executive to prevent the successful departure of hostile expeditions

greatly increased, and by co-operation between the Department of State, the Department of Justice, the Navy Department, and the Treasury Department much was accomplished.

The only instance of granting by the Treasury Department of a clearance as for a commercial voyage to one of these hostile expeditions, was in the case of the last trip of the "Commodore," of December 31, 1896.

The "Commodore" took out a cargo of arms and munitions consigned to Salvador Cisneros, President of the insurgents at Cienfuegos. The hostile character and purpose of the expedition was thinly disguised in an ill-fitting garb of peaceful commerce. The Spanish Consul properly refused to issue his Consular certificate in view of the absence of the permission required by the laws of Spain, even in time of peace, in order to land arms, munitions or explosives of any kind.

The expedition was a disastrous failure, the vessel being overloaded with munitions and men, sprang aleak and sunk off the Florida coast, seven of those on board being drowned.

No clearance was granted to any other vessel, and on a subsequent application for a clearance for the "Dauntless" the Attorney General took the ground that even if the contemplated trip was only a smuggling venture against Spain which could, if successfully accomplished, entail no international responsibility on the United States, nevertheless the United States having full notice of the unlawful purpose, was bound to do nothing to facilitate it.

Attitude of the Executive in the Courts.

It is quite true, as stated by Attorney General Harmon in his opinion (Appendix I, Part I, page 20), that "the Executive has no right to interfere with or control the action of the Judiciary in proceedings against persons charged with being concerned in hostile expeditions against friendly nations," but without "interference" or "control" the Executive can, with perfect propriety, and in accordance with the rules and practice of our courts do much through its law officers to secure the serious, prompt, and careful consideration of cases involving important questions of public right and duty.

Two of the most striking instances in the history of the Supreme Court of the United States of the effective exercise of this admitted right by the Executive have occurred with reference to the construction of the neutrality laws: at the October Term, 1895, in the case of Wiborg; at the October Term, 1896, in the case of the "Three Friends."

On the 29th of January, 1897, the Attorney General of the United States presented a petition for *certiorari* in the case of the "Three Friends" to review Judge Locke's decision, in which he held the neutrality laws of the United States not applicable to the Cuban insurgents because they had not been recognized as belligerents.

The Attorney General in his petition set forth that the Secretary of State had requested that the application be made.

In his oral presentation of the petition he stated that he made the application at the request of the Secretary of State for grave public reasons, which made it of the highest importance that the law should be settled by a decision of the Supreme Court. He also moved the court in the event that it should grant the writ to set the case for hearing as soon as possible.

The application was renewed on the first of February, the day on which the court had announced it would adjourn for its February recess. The court, however, after retiring for deliberation announced that the application for the writ was granted, and that the case was set for argument on the third Monday of February—the 15th of February; and on that day the court convened specially to hear the case in the midst of its customary recess.

By the law as it stood at the time of the suing out the writ of error in the case of Wiborg et al. *vs.* The United States, the review by the Supreme Court in cases of conviction not only of capital crimes but of crimes otherwise infamous (*i. e.*, punishable by imprisonment in the penitentiary) was permitted; but on the 20th of January, 1897, the law was amended so as no longer to permit appeals to the Supreme Court in criminal cases except in cases of conviction of a capital crime. When, therefore, Hart was convicted in February, 1897, (Appendix III, Part II), the only court having jurisdiction to review on writ of error was the Circuit Court of Appeals.

The Judiciary Act of 1891, which established these intermediate courts of appeal provided, however, on the one hand, that said courts might, of their own motion, consult the Supreme Court on any questions as to which they wished their direction, and on the other that the Supreme Court itself might by *certiorari*, otherwise, require any case, which it deemed of sufficient importance, to be brought up to it for review. It was under this latter provision that the case of the "Three Friends," which in ordinary course could only be reviewed in the Circuit Court of Appeals for the circuit in which it was rendered, was brought up to the Supreme Court of the United States by writ of *certiorari* to the Circuit Court of Appeals at New Orleans.

While the "Three Friends" case was under consideration by the Supreme Court of the United States, the trial of Hart, the owner of the "Laurada," for the expedition of the "Laurada" and "Dauntless" *via* Navassa Island (No. 25), was proceeding in Philadelphia before Judge Butler.

The trial was conducted by the prosecutor and the court with a solemnity and earnestness befitting its importance.

It began on February 16th, 1897, and the closing argument of Honorable James M. Beck, the United States Attorney, was made on Washington's birthday, February 22d, which is a public holiday. This circumstance is alluded to (App. III; Part II, p. 103) in the following peroration, which is reproduced because it does honor to our bar, credit to our public officers, and justice to the true spirit of our institutions:

> "I have done my duty in this matter, I believe. I have prosecuted the case as was my duty, endeavoring to extenuate nothing; nor to set down aught in malice. The rest remains with you. The prosecuting officer can but prosecute; Congress can but pass the law; and, in the event of a sentence, his honor, the judge, can only say what is the *quantum* of punishment.
>
> "If it be a case for clemency, only the President of the United States can determine its propriety. But the body of men upon whom the responsibility rests of determining the fact of guilt, and that fact alone, is this jury. You must put behind you all sympathies, all prejudice, all passion whatever. If you were to say, 'We believe John D. Hart guilty, but we will not find him guilty, because we are not in sympathy with the legislation,' you would simply break the laws just as the Government believes that the defendant has broken them.
>
> "It may seem inappropriate that a United States court should be in session on the day which is consecrated by the patriotism of our country to the memory of Washington, and yet we could, perhaps, in no better way call to mind his noble example than by vindicating the policy of 'peace, commerce and honest friendship with all nations' with which his great name is inseparably identified. Conscious of the mischevious character of such military expeditions and enterprises, it was he who said that they could not receive 'too close and early attention,' and that they required 'prompt and decisive remedies.'
>
> "It remains with you to vindicate this policy, and the honor of the nation as well. I said, in opening, that the imperative need of the hour was not more laws, but more obedience to the laws, to which Mr. Lewis replied that if the laws were good they would be obeyed. But who is to decide whether a law be good or evil, and whether it should be obeyed or not? If each citizen is to determine this question for himself our Government becomes one, not of law, but of lawlessness, and the operation of the laws will be unequal, because their burden will fall lightest upon those

with easiest consciences. Said the great founder of our Commonwealth, 'That Government is free to the people under it where the laws rule and the people are a party to those laws.' Obedience to the law, therefore, becomes the corner-stone of the Republic. For this jury to violate the law by either practically repealing an act of Congress or usurping the pardoning prerogative of the President would be to destroy the very foundations upon which our Government rests. Nay, more, it would be a violation of the oath which each juryman took when he entered that box, which was to decide the case upon the evidence and the law as interpreted by the court.

"No cause can be so good as to ask you to sacrifice your honor; no men or body of men can demand that you violate your oaths. I might invoke the conscientious discharge of your duties in the words of him who said: 'Be just and fear not. Let the ends thou aimest at be thy country's, thy God's and truth's.' But I prefer the yet nobler invocation to duty of the same great poet:

> "'To thine own self be true:
> And it must follow as night the day,
> Thou canst not then be false to any man.'"

II.

Attitude of the Executive from March 4, 1897, to Date.

The text, the spirit, the significance and the effect of President McKinley's Inaugural have been already set forth in the Introduction.

When the new administration came in the "Three Friends" case had been decided by the Supreme Court, Hart had been convicted in Philadelphia, and the trial of Luis had been set for March 23 in Baltimore. Immediately on the return of the "Laurada" from Cuba detailed information of her fitting out and arming and of the actual committing of hostilities was furnished to the Department of Justice. Nothing was done to bring the "Three Friends" case promptly to a hearing on the merits in the court below before the adjournment of the Supreme Court for the term on May 24th, so that it is impossible to have any further consideration of the true construction of Section 5283 by that court until next October, no matter what may be decided by inferior courts in the interval.

In the Hart case an appeal was taken from the conviction, which appeal lay to the Circuit Court of Appeals, in Philadelphia, under the Act of January 21, 1897, instead of the Supreme Court, as for-

merly. By following the precedent in the Wiborg case the Government could have so urged a speedy hearing by the Appellate Court that it is believed the Circuit Court of Appeals would, like the Supreme Court of the United States in the Wiborg case, have expedited the hearing of the appeal. If the conviction was improper it ought for every reason to be speedily reversed, but if it was proper it would seem to be a matter of national and international interest to the United States that the offender should pay the penalty of his offense without delay or respite.

Unfortunately the matter was not so presented to the Circuit Court of Appeals as to induce it to advance the case, and Hart being at large on bail, with a fair prospect of immunity until the autumn, occupied himself with getting off new expeditions, notably the last one of the "Laurada." (No. 35.)

For this expedition the Laurada has been libelled in Wilmington, Delaware, where she is in custody, but Hart has not been proceeded against, as he might have been in connection with this expedition for violation of Sections 5283, 5286, and 5440.

The trial of the Luis case duly proceeded and has resulted in a conviction.

What Judge Morris said in that case in imposing sentence and in refusing bail pending a writ of error to review the conviction is set out to show a view of our neutrality laws and the duty of our courts which should not be lost sight of:

> "This case is one in which the traverser has unquestionably done what he has done with a full knowledge of the law, and, I doubt not, because he has believed that it was his personal duty to assist his countrymen in Cuba in their struggle against the Spanish rule; and that he has done it, notwithstanding the law of the United States forbids the means which he has used. That is a matter, so far as the moral aspect of the offense is concerned, entirely with his own conscience. But that being his conception of his duty, it seems to me that it is obvious that nothing but an enforced obedience to the law will prevail; and as he does not think it is a law which he ought to obey, the court, if it attempts really to enforce the law, and not merely pretends to enforce it, MUST INFLICT UPON HIM SUCH A PUNISHMENT AS WILL PREVENT HIS CONTINUING TO BREAK THE LAW, AND WILL BE A DETERRENT TO OTHERS. IT IS CERTAINLY THE DUTY OF THE COURT RIGOROUSLY TO ENFORCE THE LAW, AND NOT BE CONTENT WITH A MERE PERFUNCTORY PUNISHMENT.
>
> "It is, therefore, my duty to inflict such a punishment as will be a deterrent in the future; and the sentence of the court is that he be confined in the Baltimore City Jail for 18 months, and pay a fine of $500.

"Mr. BRADLEY T. JOHNSON. Would it be worth while to make another application for bail, pending this writ of error that is going up?

"THE COURT. With regard to that, THE SAME IDEAS OF MY DUTY REQUIRE ME, AS I THINK, TO REFUSE BAIL PENDING THE WRIT OF ERROR. The exceptions taken during the trial do not, in my judgment, go at all to the real merits of the case; they are of the most technical character, and I have no doubt of the fairness and justice of the verdict. The law, this neutrality law, has been construed by the Supreme Court in several cases, so that there is very little doubt as to its real meaning; and it is not like a law which is being enforced for the first time, in which there might be doubt as to its proper construction; I am not troubled about any doubt on that score. I do not think it is a case to allow the prisoner to go on bail.

"Mr. BRADLEY T. JOHNSON. It will be about 18 months before his case can be heard probably, and, therefore, it is quite within the range of possibility that this innocent man may be punished for that length of time, and the appeal be successful.

"THE COURT. YOU CANNOT VERY WELL SAY HE IS AN INNOCENT MAN; HE MAY BE A MAN WHO HAS BEEN CONVICTED WHEN THERE WAS SOME TECHNICALITY WHICH COULD HAVE PREVENTED HIS CONVICTION."

THE APPENDICES COMMENTED ON AND EXPLAINED.

The voluminous character of the Appendices makes it, on the one hand, desirable that this Report should not be unnecessarily prolonged, and on the other, that some indication of the character and contents of the Appendices and some comments thereon should be furnished.

To this task the undersigned proceeds to address himself:

APPENDIX I, PART I.

OPINION OF THE ATTORNEY GENERAL AND REPLY THERETO.

The opinion of the undersigned, dated January 31st, 1896, which appears in Appendix I, Part I, pages 1–15, was prepared for the Legation in response to an opinion of the Attorney General of the United States, containing an expression of his views on the legal propositions stated in the communication of the Spanish Minister to the Secretary of State, of October 19, 1895, a copy of the opinion of the Attorney General being transmitted by the Secretary of State

to the Spanish Minister on the 21st of December, 1895. From this copy the Attorney General's opinion is printed in Appendix I, Part I, pages 16–20.

A printed copy of the opinion of the undersigned was transmitted to the Honorable Joseph McKenna, Attorney General of the United States, on March 17, 1897, in a letter which is printed below.*

The admissions and assertions of Attorney General Harmon's opinion are thus collated in the opinion of the undersigned—

> "His views are given under five heads or subdivisions, but before considering these in their order, let me first note what the learned Attorney General admits in his opinion.
>
> "He admits the experience of the United States during former insurrections in Cuba of attempts to violate the laws of the United States intended to prevent violations of the obligations of the United States under the law of nations.
>
> "He admits that the laws of the United States are intended to prevent offenses against friendly powers, whether such powers should, or should not, be engaged in war or in attempt to suppress revolt.
>
> "He admits that the failure of the United States to pass such laws would not diminish their obligation under the law of nations.
>
> "He admits that the President may, under the existing laws, employ the military and naval forces to disperse or prevent the departure from our territory of expeditions or men, arms or munitions, which are manifestly part thereof, and that there is authority for putting under bonds persons justly suspected of an intention to engage in such enterprise,

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MARCH 17, 1897.

**Honorable Joseph McKenna,*
etc., etc., etc.

SIR—Referring to our interview of yesterday I have the honor to hand you herewith a copy of my opinion to the Spanish Legation of January 31, 1896, given in response to the opinion of your predecessor dated December '95; also a copy of my Report to the Spanish Legation made last July.

I have marked a few pages in these documents as bearing on the matter discussed yesterday, and I venture to hope that in any event you will find the collection of Proclamations, laws and decisions a convenient compendium for the study of the general subject.

In addition to the general considerations already brought to your attention with reference to the application for clearance of the "Dauntless" I beg to remind you that in Cuba, as well as in Spain, France and Italy, it is unlawful to land arms, ammunition or explosives, even in time of profound peace and tranquility, without a special permit, and that the records of the Courts of the United States show that the "Dauntless" herself has violated various laws of the United States besides the neutrality laws, while her actual part in landing hostile bodies of armed men on the shores of Cuba, for the committing of which hostilities she was fitted out in the United States, is believed to have rendered her liable to forfeiture under Section 5283, R. S. U. S.

I have the honor to be, Sir,
Your obedient servant,
(Signed) CALDERON CARLISLE.

and he further admits that the Government of the United States possesses all the attributes of sovereignty with respect to the subject under discussion, and has for their exercise the appropriate agencies which are recognized among civilized nations.

"He further admits that if persons supplying or carrying arms or munitions from a place in the United States are in anywise parties to a design that force shall be employed against the Spanish authorities, and that, either in the United or elsewhere, before final delivery of such arms and munitions, men with hostile purposes towards the Spanish Government shall also be taken on board and transported in furtherance of such purposes, the enterprise is not commercial but military, and is in violation of international law and of our own statutes.

"He further admits that it is the duty of the United States, of its own motion, when a state of war is declared or recognized by another country, to use due diligence to discove and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such a war.

"He further admits that, even in the case of an insurrection in a foreign nation which does not itself acknowledge a state of war, actual notice of hostile expeditions against such friendly nation, undertaken or threatened, creates the duty of vigilance to prevent them, and the fact that the different elements intended to constitute a hostile expedition are separately prepared or transported does not change such duty but simply renders it more difficult to perform.

"He further admits that if there should be a manifest failure of justice in a judicial proceeding intended to prevent and punish violations of our obligations under the law of nations, which should result in the consummation of a hostile enterprise against Spain, causing her damage, capable of proof, the question would arise whether under the ruling of the Geneva tribunal Spain would be precluded by the judgment.

"On the other hand the learned Attorney General asserts broadly that international law takes no account of a mere insurrection (confined within the limits of a country), which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own government, or by foreign governments.

"That in the present case neither Spain nor any other country has recognized the Cuban insurgents as belligerents, and they are, therefore, simply Spanish citizens with whom Spain is dealing within her own borders, and the fact that

by common report they are engaged in armed resistance to her authority is merely a circumstance of suspicion to be considered in any inquiry which may be had concerning the conduct of persons within the Uunited States who may be suspected of hostile intentions towards Spain.

"He further insists that the President's proclamation of June the 12th did not change the situation in any respect. That as the failure to pass our neutrality laws would not diminish our international obligations so the passing of them does not increase such obligations. And he asserts that the *mere* sale and shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in the insurrection against the Spanish Government; that neither our Government nor its citizens have *means of knowledge* and therefore cannot be bound to take notice who are, and who are not, loyal subjects of Spain so long as their actions are confined to their own territory, and that the absolute right of individuals in the United States to sell such articles and ship them to whoever may choose to buy has always been maintained. He adds that *merchants* cannot follow their cargoes to Cuba in order to discover the character of their customers, nor can *mere* carriers conduct an investigation into the motives or designs of their consignees.

"Referring to that part of the note of October 19th which gives official notice as to the ports recognized by the Spanish Government as open to commerce in Cuba, the learned Attorney General insists that the revenue and police regulations of a country have never been recognized by international law as coming within the rules regulating the conduct of other nations, and that the landing of arms and munitions *by stealth* in Cuba would be *mere* smuggling which must be prevented by the Spanish Government and in no wise concerns the United States.

"Somewhat qualifying his broad assertion that international law takes no notice of an insurrection, the learned Attorney General says that it is by no means certain that the knowledge of the existence of a mere insurrection even when its location or alleged motives may be thought likely to lead to violations of our laws in that behalf, imposes any general duty of watchfulness the neglect of which would be just ground of complaint by the nation involved which does not itself acknowledge a state of war.

"Finally, he asserts that it cannot be truly said that our laws which have been tested by an experience of a century do not fully cover or adequately punish all violations of the

duties imposed both by international law and by treaty on all persons within the United States; that the Executive has no right to interfere with or control the action of the judiciary in proceedings against persons charged with or concerned in hostile expeditions against friendly nations; that our Constitution forbids the arbitrary exercise of power when the liberty or property of individual citizens is involved, and that he does not think that the Government of the United States can be held chargeable with lack of diligence in not taking steps which would be inconsistent with the principles on which all republics are founded."

And after carefully considering and discussing the five views of the learned Attorney General, the opinion of the undersigned concludes as follows:

"The foregoing discussion leads me to the following conclusions:

"First. That the United States now owes to Spain all the international duties which one friendly nation owes to another in time of peace, and can owe no international duty to the insurgents.

"Second. That by admitting officially and proclaiming to its citizens and inhabitants knowledge of the existence of the insurrection in Cuba, the United States admits knowledge of a fact which increases its duty of vigilance in detecting, and diligence in preventing, the beginning or setting on foot, or providing or preparing the means for, military expeditions or enterprises by its citizens or inhabitants within its territory against Spanish territory.

"Third. That as to mere commerce Spain can, under present conditions, claim no right under the law of nations to interfere with it outside her own borders; which fact, however, does not lessen, but increases the obligation of the United States to prevent military expeditions and enterprises against Spain from being begun, or set on foot, or the means for such being prepared and provided, within the territory of the United States by the organized and authorized agents of the insurgents under the false and fraudulent pretense of mere peaceful and lawful commerce.

"Fourth. That even admitting, in the present state of the law, that citizens of the United States may sell arms and munitions of war to anybody wishing to buy them and able to pay for them, and that the organized and authorized agents of the Cuban insurgents within the United States may thus obtain large quantities of arms and munitions of war to aid the insurrection, the commercial transaction must end here, because it is impossible, in fact and in law, by mere

commerce, for the insurgents' emissaries in the United States to get these arms and munitions to the insurgents in the field, for whom they are purchased, but in order to accomplish this, or attempt to accomplish this, a military expedition or enterprise must be begun, or set on foot, or the means must be prepared and provided, by the insurgents, or their agents, within the territory of the United States.

"Fifth. That the municipal laws which in themselves or by reason of the method of their administration by municipal, judicial or executive officers, permit the repeated consummation of hostile enterprises against a friendly nation can furnish no justification or extenuation for any international wrong or damage as against such friendly nation."

TABULAR STATEMENTS AS TO EXPEDITIONS AND ENTERPRISES TO COMMIT HOSTILITIES.

Following the opinions just referred to, and included in Appendix I, Part I, pages 21–32, inclusive, are two tabular statements of military expeditions or enterprises set on foot in the United States to commit hostilities in Cuba.

The first, pages 21–26, is a translation of a table prepared in the Legation with special reference to the fate of the expeditions.

The expeditions treated of are forty-two in number, the earliest date being June 4th, 1895, and the latest May 30th, 1897.

The second table has been prepared in my office with reference to the judicial proceedings in the United States growing out of the same forty-two expeditions.

By these tables it appears that the steamer "Laurada" either made or attempted five trips, and she is now in custody in Wilmington, Delaware, under a libel for violation of Section 5283; See Appendix II, Part II.

The steamer "Commodore" appears to have made or attempted five trips, and to have foundered on her last trip, December 31st, 1896. The steamer "Bermuda" has made or attempted three trips before the revocation of her British register, and two since. She is now reported to be held for forfeiture by the British authorities at Port Antonio, Jamaica. The ocean tug "Three Friends," alone and in combination, has made or attempted eight trips; two libels against her under Section 5283 for some of these expeditions have not yet been finally disposed of. The ocean tug "Dauntless," alone and in combination, has made or attempted six trips. The steamer "Monarch" has made or attempted three trips. Of the remaining vessels, the "Woodall" is believed to have been sold by the Junta and to have afterwards foundered; the "Leon" and "Horsa" have ceased to be employed by the Junta; the "Hawkins" foundered two days out from New York with a military expedition on board; all but five of the men were rescued. The "Competitor" was captured in Cuban waters.

According to the first table it appears that twenty-one of the forty-two expeditions were from one cause or another total failures; that six were partial failures, and of the remaining successful ones proceedings have been instituted in the courts of the United States, either against persons or vessels, in eleven out of fifteen cases. In these proceedings no vessel has been finally condemned. The only three convictions of persons are in the cases of Wiborg, in Philadelphia, affirmed by the Supreme Court, Hart in Philadelphia, now pending on appeal to the Circuit Court of Appeals, and Luis, convicted in Baltimore, who is now serving his sentence of imprisonment.

The captain and mate, Svanoe and Christiansen, of the Leon, were indicted in Philadelphia, but the indictments have not yet been tried. Murphy, captain of the "Laurada" has been indicted for the same expedition for which Hart was convicted, No. 25, but has not been tried. It is understood that he is being proceeded against in Kingston, Jamaica, by the British authorities, for violation of the Foreign Enlistment Act. Hughes, captain of the "Laurada," was acquitted in Charleston. O'Brien, captain of the "Bermuda" was tried with Hart, the charterer, and Nunez, the superintendent, and they were all acquitted in New York. Of all the proceedings against persons brought to final trial there have only been the three convictions above mentioned. There have been three acquittals: (1) In the case of the expeditionists at Wilmington, Delaware (U. S. *vs.* Pena *et al.*); (2) Hart, Hughes, Bueno, Brabazon and Guerra, jointly indicted in New York were acquitted (U. S. v. Hart *et al.*); and (3) Hughes was acquitted in Charleston (U. S. v. Hughes). In two cases the jury disagreed, namely, in the indictments against Hart, Nunez and O'Brien, and in the indictments against Nunez and Dickman. These cases have not been brought to trial a second time.

Many attempted proceedings were abandoned. The fine imposed upon the captain of the "George W. Childs" was never collected and the vessel was never seized. The proceedings against the important deposit of arms seized upon Cedar Key, which were begun, were voluntarily dismissed by the United States Attorney. In many instances men were arrested and discharged upon preliminary hearing, the cases against them being either insufficiently presented or insufficiently considered.

The steamer "Commodore" was libelled for making a foreign voyage with a coastwise license, but the proceeding was never brought to trial.

As to proceedings against vessels, the libel at Wilmington, North Carolina, against the "Commodore" was dismissed as was also one of the libels against the "Dauntless" at Jacksonville, Florida, but there are proceedings pending against the "Dauntless" undisposed of.

In a great many cases, however, there were no proceedings even attempted against men or vessels.

The Cuban Documents.

Following the Tables, Part I of Appendix I concludes with the translation of certain interesting documents, emanating from the Delegation of the Cuban Revolutionary Party in New York, which have fallen into the hands of the Spanish authorities in Cuba.

A *fac simile* of one of the originals appears as a frontispiece to this volume. It is a commission issued in New York to Brigadier Juan Rius Rivera, placing him in command of an expedition sent out from the United States. Rivera was captured in the field, and is now in prison in Cuba.

The translation of this document is as follows:

[Arms of Cuba]
Cuban Revolutionary Party
Delegation.

New York, 10th of August, 1896.

Brigadier Juan Rius Rivera,

Distinguished Fellow-Citizen: This Delegation, confiding in your fitness, patriotism and experience, has deemed it expedient to entrust you with the command of the expedition, which ought to disembark in the Vuelta Abajo, and which at the time of the disembarkation Colonel Emilio Nunez should deliver to you. It is pleasant for me to have this new occasion to reiterate to you the testimony of my true appreciation.

T. ESTRADA PALMA.

The Cuban Documents merit, and will receive, more extended comment than it is practicable to give them at this time.

For the moment it is sufficient to say that they are official communications, and enclosures from Tomas Estrada Palma in New York to the civil and military officers of the insurgents in Cuba, relating not only to military and naval expeditions set on foot and fitted out in this country to commit hostilities in Cuba, but to operations of government carried on in New York in aid of the insurrection; among others, a scheme to collect taxes for the insurgent government from the sugar planters, to be remitted to New York, and to enforce the collection of these taxes by devastation and terror—deliberately suppressing by these measures concocted in New York the principal industry of the Island of Cuba, and visiting on its people untold misery and suffering.

These Cuban documents cannot better be introduced than by some extracts from Appendix 3 of Senator Cameron's Report No. 1160, Fifty-fourth Congress, second session, to be read in connection with the Tables, and followed by certain extracts from the documents themselves, which throw additional interesting light on the subject.

Appendix No. 3 to Mr. Cameron's Report to the Senate, from the Committee on Foreign Relations, entitled "Recognition of Cuban Independence," December 21, 1896, is headed "Cuba's case."

It contains a long communication from T. Estrada Palma, the so-called Delegate Plenipotentiary of the Insurgents.

Under the sub-head "PRELIMINARY ORGANIZATION FOR REVOLT" is the following:

> "In order that the movement should be strong from the beginning and organized both as to civil and military administration the Cuban Revolutionary Party was founded with Jose Marti at its head. The principal objects were by united efforts to obtain the absolute independence of Cuba, to promote the sympathy of other countries, to collect funds with these objects in view and to invest them in munitions of war. The military organization of this movement was completed by the election of Maximo Gomez as Commander-in-chief."

Under the sub-head "UPRISING" is found the following passage:

> "A large amount of war material was then bought by Marti and vessels chartered to transport it to Cuba where arrangements were made for its reception in the Provinces of Santiago, Puerto Principe and Santa Clara. BUT AT FERNANDINA, FLORIDA, it was seized by the United States authorities. Efforts were successfully made for the restitution of this material; nevertheless valuable time and opportunity was thus lost."

Under the sub-heading of "BATTLES AND CAMPAIGNS," speaking of the Province of Santa Clara:

> "Generals Roloff, Sanchez and Rodriguez landed in that Province at about this time with a large amount of war material, but not enough as it proved to fully arm all those who enthusiastically rushed to join them."

On the same page mention is again made of General Serafin Sanchez.

Again:

> "While the westward march of Gomez was in progress Generals Francisco Carillo and Jose M. Aguirre landed on the eastern end of the Island with a CONSIDERABLE SUPPLY OF

MUNITIONS, INCLUDING SOME ARTILLERY, and succeeded in marching through the Provinces of Santiago and Puerto Principe into that of Santa Clara, capturing several forts on the way. General Carrilo has taken command in the Remedios district where his personal popularity has caused thousands to join him. General Aguirre reported to the Commander-in-Chief and is now assisting in the operations of Matanzas."

On the same page:

"As artillery has now been introduced in the Cuban Army forts are more easily taken. . . . Supplies are received by the Cubans at convenient points on the coast and transferred to the interior."

Under the sub-heading "MILITARY ORGANIZATION," page 65, appear Generals Rodriguez, Roloff, Serafin, Sanchez, Carillo and Aguirre as serving in the Third, Fourth and Fifth corps. All of these came from the United States with military expeditions.

Under the heading "CIVIL GOVERNMENT," it appears, page 66, that Carlos Roloff was elected Secretary of War, Colonel Portuondo Secretary of Foreign Relations, Joaquin Castillo sub-Secretary of the Treasury. These were elected, with others, on the 18th of September, and—

"on the same day the constituent assembly elected by acclamation as delegate plenipotentiary and general agent abroad of the Cuban Republic the undersigned, Tomas Estrada Palma. The credentials issued to me are hereto annexed, marked C."

Speaking of the Secretary of the Treasury, the communication continues:

"All moneys collected in accordance with the laws of the Republic, as well as those received through voluntary contributions, are delivered to him or his duly authorized agent and expended under his supervision, or that of his agents, to supply the pressing needs of the Government, which are mainly purchase of arms and ammunition. The money thus collected has been sufficient to equip the army and keep it supplied with ammunition, although as it is natural from the rapid increase of the ranks and the difficulty of bringing supplies into the island many of the new recruits have not yet been fully armed. The problem of equipping the army is not a financial one, but arises from the caution necessary to blockade running, and above all the preventive measures taken by foreign governments, and the notice which is in all cases given to the enemy of the embarkment of munitions."

On page 91 appears Article Twenty-three of the Constitution of the Provisional Government of Cuba, which treats of coast inspectors, and thus describes their duties:

> "The duties of the inspectors will be to watch the coast and prevent the landing of the enemy; to be ALWAYS READY TO RECEIVE DISEMBARKMENTS AND PLACE IN SAFETY THE EXPEDITIONS WHICH MAY COME FROM ABROAD, to establish all the salt works possible, to capture the Spanish vessels which frequent the coasts on his guard, and to ATTEND WITH SPECIAL CARE TO THE PUNCTUAL SERVICE OF COMMUNICATIONS BETWEEN HIS COAST AND FOREIGN COUNTRIES."

It thus appears in a Congressional document that the arms and munitions which made the first rising under Marti possible came from the United States; that the detention of these arms by the United States authorities delayed the movement, though efforts were successfully made in the interest of the proposed movement by Palma and his associates for the restitution of this material, and a military enterprise connected with the original rising against the authority of Spain in Cuba, was thus begun and set on foot and the means prepared and provided in the United States.

It further appears that many of the leaders of the insurgents in the field have accompanied military expeditions from the United States; that artillery was introduced into the Cuban army from the United States in one of these expeditions, which marched in hostile array from the coast through the provinces of Santiago and Puerto Principe.

It nowhere appears that any military stores or equipments have been procured by the insurgents, outside of the Island of Cuba, except in the United States.

From the foregoing tables it appears that a fleet of steamers and ocean tugs, fitted to commit hostilities, have participated in these hostile expeditions. Of these, the steamer "Bermuda," English, and the steamers "Horsa" and "Leon," Danish, are the only foreign vessels which have been employed, but these were controlled by an American charterer, Hart, who has been four times tried for violation of the neutrality laws and only once convicted.

The remainder of the fleet is American, American registered and flying the American flag, and everything done on board these vessels, on the high seas, in preparation for hostilities, is as much within the territory and jurisdiction of the United States as if done on the shore or in the harbors of the United States. The steamers "Laurada," "Monarch," "Biscayne," "Woodall," "Hawkins" and "City of Richmond," the ocean tugs "Commodore," "Three Friends" and "Dauntless," the numerous schooners, lighters, harbor tugs and steamboats which have aided and abetted secret transfers on

the high seas, are all American territory. Of course, the commanders of American vessels ought to be Americans. Some of these captains have commanded both the British "Bermuda" and the American "Laurada," which may raise a doubt as to which is their real national character, British or American, but it would seem that in every instance the seamanship, daring and courage of the skipper is furnished by northern races, while the pilots alone are Cubans.

The Revolutionary Party Delegation, or as it is commonly called "the Junta," is established in New York. Tomas Estrada Palma, the delegate, is its presiding officer; Gonzalo Quesada, is Secretary; B. F. Guerra, its Treasurer, and General Carlos Roloff, Secretary of War of the so-called Cuban republic, has taken an active part in its deliberations and councils. The so-called Brigadier General Emilio Nunez has been chief of expeditions since the beginning of the insurrection and his prómotion for his services has been recommended from New York. He has been to Cuba in person at least once to secure the success of an expedition. By proceedings in the United States courts he appears to have been connected with eight expeditions, and by information furnished to the Legation with many more. Dr. Joaquin Castillo y Duany, elected Assistant Secretary of the Treasury of the so-called Cuban republic, has been for some time acting as General Nunez's chief assistant. Captain Hart, lately convicted in Philadelphia, figures as the owner or charterer of the "Bermuda," "Leon," "Horsa," "Laurada," and other vessels. Captain Napoleon Broward is the principal owner and commander of the "Three Friends," which is believed to have been built for the filibustering business. One Bisbee, the brother of the United States collector at the port of Jacksonville, is the principal owner of the "Dauntless."

The captains who have commanded the various vessels which have carried these hostile expeditions, and which have been, within the United States, fitted to commit these hostilities, seem to have constituted a sort of naval service and to have been in many instances transferred from one vessel to the other. Captain Murphy has been in command of the "Laurada" and "Bermuda." Captain Hughes of the "Laurada" and "Bermuda." Captain O'Brien of the "Laurada," "Bermuda" and "Commodore." Captain Morton of the "Commodore." Captain Hudson of the "Woodall." Captain Wiborg of the "Horsa." Captain Svanoe of the "Leon." Captain Broward of the "Three Friends." Lewis, the mate of the "Three Friends," has figured also in connection with the "Dauntless," and Rand, who distinguished himself in the same business in the Haytian insurrection, has served as mate on board the "Laurada."

Here are some extracts from the translations of Cuban documents specially referring to expeditions:

Tomas Estrada Palma to "Major General Maximo Gomez."

[Arms.]
Cuban Revolutionary Party
Delegation.

NEW YORK, July 22, 1896.

. . . . . .

"Miguel Betancourt will probably hand you this letter, or perhaps Rafael Cabrera, a worthy patriot and leader in the former insurrection. Either of these will talk to you about the subject of which I have omitted to treat in this letter, and will explain the subject treated in my communications to the government, of which I enclose a copy. Every kind of diligence is used here to supply you with arms and ammunition. From the 31st of June to the last of July four hundred thousand cartridges, and six hundred rifles have been landed, amongst them four hundred Mauser, nearly two thousand pounds of dynamite, wires, electric batteries, machetes, medicines, etc., etc. Three expeditions have sailed which landed respectively in Matanzas, Pinar del Rio and Havana. . . . But our earnest desires and diligence are dashed to pieces against the scarcity of funds which threaten us. . . . I do not wish to add here anything respecting the attitude which with greater reason the Republican party, which will succeed the Democratic party actually in power, might assume. It is therefore indispensable from every point of view to obtain money sufficient to land in Cuba before November five thousand rifles and some millions of cartridges. My efforts to place our bonds and to contract loans in the United States, London and Paris have been fruitless. After many promises unfulfilled and hopes vanished we have arrived at the conviction that we shall obtain nothing in this way and as patriotic gifts are extremely deficient there remains no way other than that of taxing the approaching sugar harvest. By the accompanying documents you will perceive that I have formed a committee with this object."

In the same letter, speaking of the opinion of a correspondent in Havana as to the probable military movements, Palma continues:

"I think the same, and for that reason am preparing an expedition of one thousand rifles and five hundred thousand cartridges, which the worthy patriot Brigadier Juan Rius Rivera will carry to General Maceo. The following expedition will be of equal importance; it will take cannons with projectiles of dynamite, if the trials which are being had

result satisfactorily, or mountain guns of twelve pounds, which I have already contracted for and which will go wherever you direct. All our difficulties are caused by the vessels. This is what bothers me and prevents my sending immediately to General Maceo the expedition to which I refer. The Commodore, which belongs to us, does not carry sufficient and is not fast enough. The Bermuda, in which we have some money, cannot be utilized, owing to the want of a flag. The Minister of Great Britain has refused to allow her to go on using the English flag, and we are begging in vain some of the South American Republics to give us permission to use theirs. In order to obtain that of the United States' it is necessary to have the sanction of Congress, which does not sit in session until December. The Three Friends has already made four voyages, and the proprietors refuse to charter her again. No one will charter us a vessel unless we deposit its value, forty or fifty thousand dollars, which, for the moment, we cannot dispose of in this way. I am working, however, to secure the Three Friends, even if I have to guarantee twenty-five thousand dollars, and I believe I shall manage to use her again. I do not despair, and have confidence I shall find a suitable vessel for the projected expedition.

"Miguel Betancourt will explain to you everything concerning the expedition which Leyte Vidal ought to have landed, and that which went in charge of Ruz. I have instituted an inquiry in both cases, which report I am not sending you as I have no time to make copies and require the originals."

Palma to Gomez.

The letter, dated July 29, 1896, encloses a copy of the foregoing letter of July 22, and begins thus:

"My Dear General and Esteemed Friend: The original of the copy which I enclose is in the possession of Miguel Betancourt who should have arrived there by this time, but who is detained owing to the vessel which was to have taken him, and which is freighted and ready, being watched by two American gunboats. It is of urgent importance that those communications should reach you and the government, and I shall avail myself of every means by which this may be done."

In the same letter of the 29th of July:

"We are also negotiating for a vessel faster than any Spanish one, for I dare not run the risk any longer of employing slow vessels."

"I ought also to mention that in a recent letter Jose M. Botamos, sub-delegate of the treasury in the province of Havana, speaks of a sum of ten thousand dollars which he was forwarding by the bearer of the letter for the purpose of enabling Commandant Castroverde, General Aguirre's chief of staff to conduct another expedition, in addition to the one landed by Dr. Castillo on the 6th of July last near Guanabacoa. The money has not arrived, but one perceives that such a sum did exist in the power of the sub-delegate referred to."

Palma to the Secretary of Foreign Affairs.

[Arms.]
Cuban Revolutionary Party
Delegation.

"NEW YORK, 10th of September.

"DISTINGUISHED COMPATRIOT:

"I have the pleasure to enclose copy of the communication from Key West, sent me by Colonel Emilio Nunez on his return from the coast of Cuba, where he had landed in safety three large expeditions, carrying in all thirty-nine hundred rifles, one million two hundred and fifty thousand cartridges, three cannons, twelve pounders with park of artillery; six hundred machettes, one thousand pounds of dynamite, wires and electric batteries, medicines, etc. The perusal of said letter will inform you of the details of this operation which has been crowned with so happy a result. For further elucidation I will give you the following explanations. Comprehending the urgency of utilizing the month of August for placing in Cuba the largest possible quantity of munitions and rifles compatible with the funds in the treasury, I formed the plan which turned out so well in conjunction and with the aid, experience and counsel of the subdelegate, Dr. Joaquin Castillo and Colonel Emilio Nunez, Chief of Expeditions, as also of our consulting advocate Horace S. Rubens, and this happy result took place in spite of the partial interruption of the operations caused by the arbitrary measures adopted by the government at Washington. The plan consisted in sending aboard a steamer chartered for the purpose two-third parts of the cargo, one-third part aboard another steamer together with a certain number of men, and the bulk of the expeditionary force aboard a third steamer. This last steamer and the second after having duly unloaded were to meet the first, each taking its corresponding cargo from her, one to land her portion in Pinar del Rio and the other in the East. The first landing having been made in Camaguey. Our first thought was that Briga-

dier Rius Rivera, named to lead the expedition to Pinar del Rio, should go in the vessel which carried only the arms and ammunition, but subsequently on the eve of putting the plan into execution it was deemed convenient that Brigadier Rius Rivera and Brigadier Miguel Betancourt should proceed in the vessel which carried only the members of the expedition, and it was necessary for a substitute to go in the vessel carrying the arms and ammunition. I telegraphed to General Roloff, at that moment in Tampa, begging him to start at once for New York. He arrived on Saturday at two P. M., the day precisely on which the above-mentioned vessel was to start. I explained our plan to him and he agreed, offering at once to embark in the vessel which carried the arms and ammunition. This he did the same night, the vessel getting away with complete success. On the 13th instant Colonel Emilio Nunez also sailed aboard the steamer carrying the third part of the cargo, taking with him the worthy patriot Rafael Cabrera and thirty-five more men. On the 15th should have sailed the steamer aboard of which were to go Rius Rivera and Betancourt and the corresponding number of men necessary for the unloading of the other two vessels, but shortly before the hour settled for the start she was detained by order of the authorities at Washington and placed under guard of a man-of-war. It should be stated here that the steamer to which I allude, at the time of her detention, had aboard neither members of the expedition nor anything proving a violation of the neutrality laws of the country. The proceeding was arbitrary in the extreme, as is proved by the fact of her being let free five days afterwards, owing to the government having found no proof to justify her detention. Even under these circumstances the proprietor of the vessel was obliged to give his word of honor to the commander of the American gunboat that his vessel should not sail with a filibustering expedition aboard. In consequence of this the combination of which this vessel formed part was destroyed. I leave to the consideration of the Cuban Secretary and the rest of the members of government the ills which afflicted my soul in the face of this contrariety which it was impossible to remedy, as another vessel for the service could not be found. I foresaw the embarrassing situation in which Colonel Nunez would find himself, unable to count upon more than eighteen men to carry to and unload on the coast of Cuba the big cargo which was waiting for them at a determined spot aboard the other vessel. My only hope was in that once upon the ground Colonel Nunez with the aid of General Roloff would save the situation and so it happened. Nunez took half the cargo, with the few men at his disposal, and

unloaded it on the coast, where fortunately he found men on the lookout, who immediately sent word to General H —— Vasquez. Colonel Nunez returned for the rest of the cargo and, accompanied by General Roloff, carried it to the same spot, where they found hundreds of our soldiers ready to protect, with their lives if necessary, the valuable aid which the army of freedom was receiving. In order to send this cargo, I was forced to pledge the personal credit of the Delegation in twenty-nine thousand dollars for the total expenses of arms and ammunition, etc., freighting of vessels, etc., steam tugs and launches, cost of boats, transport by railway of part of the cargo, fares of men, presents to the captain and crew, etc., etc., passed one hundred and ten thousand dollars, and in the Treasury we had a little less than this sum."

A comparison of this account with the testimony in Appendix III, Part II, U. S. *vs.* Hart, where the same story is told in court, will show that both relate to the expedition of the Laurada and Dauntless (No. 25).

Scheme of Taxation Directed from New York.

The scheme of taxation is also discussed in the letters, but is clearly outlined in the minutes of the special committee.

By the Memorandum of the 16th of July, 1896, of the proceedings of a Committee, styled "A Committee of Ways and Means," and organized by Estrada Palma in New York, the schemes and recommendations of that Committee are disclosed. The principal feature is, of course, the collection of funds from Cuba for the purpose of equipping and sending out expeditions from this country to Cuba. For the accomplishment of this the general recommendations are: the concentrating in the Committee the power to make decrees regulating the production of sugar in Cuba, the rate of taxation thereon, and the method of collection. By this memorandum, and the succeeding memoranda of the 20th and 28th of July, it will appear that the project of the Committee was the absolute prohibition upon the Cubans on the Island to produce their crops, in conformity with the previous action of the insurgents on the Island. This prohibition was to be made effectual by threats of the destruction of their property. From this general prohibition certain planters in certain sections were to be excepted by way of concession, they to pay, in advance, 50 cents per sack of their sugar upon the estimated crop.

The scheme also specially seeks the collection of contributions from those who had produced sugar in Cuba, without paying for a concession, or in violation of previous prohibitions, and in those cases a further condition to any concession to them is that they

should pay on the basis of crops previously harvested, as well as upon the prospective crop, before they be permitted to carry on any work of cultivation at all. And this is to be enforced by threatening destruction to their property unless they pay in a short space of time. An additional memorandum contains a tabular statement, giving the names of planters in Cienfuegos and Trinidad, together with the amount of the crop which they had made, for the purpose of indicating the revenue to be derived from those particular plantations. This committee in these minutes of its proceedings also declares the great importance of having the committee clothed with absolute power to regulate this matter, and that its decree in the premises be rigorously enforced by the insurgents in the field.

Appendix I, Part II.

This consists of the reproduction of a pamphlet entitled "Neutrality Laws of the United States as to vessels, fitted out or armed to commit hostilities," prepared by the undersigned after the decision of the "Three Friends" case by the Supreme Court. It undertakes to show that under Section 5283, R. S. U. S., ANY VESSEL—OF ANY KIND OF DESCRIPTION, which is, in the United States, furnished, fitted out or armed with intent that such vessel shall be employed in the service of the Cuban insurgents, TO COMMIT HOSTILITIES, NO MATTER WHAT THE CHARACTER OF THE HOSTILITIES, against the subjects or property of the King of Spain is liable to forfeiture by civil proceedings in admiralty, and all arms, munitions and stores which may be procured for the equipment of such vessel are in like manner and by like proceedings subject to forfeiture.

It discusses the opinion of the Supreme Court in the Three Friends case, rendered March 1, 1897, which decides absolutely and finally three very important points.

First, that Section 5283 applies to the present Cuban insurrection, in spite of the fact that the insurgents have not been recognized as belligerents.

Second, that the previous conviction of any person under the first part of the section is not necessary to a forfeiture under the second part, but that the proceedings for forfeiture are wholly independent of any proceedings against persons.

Third, that a vessel seized for violation of Section 5283 should not be released on stipulation pending proceedings for forfeiture.

In deciding the last point the following language of Judge Brown in the case of the "Mary N. Hogan," 17 Federal Reporter, 813, is quoted with approval by the Supreme Court of the United States:

> "It is clearly not the intention of Section 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a *hostile expedition* against a friendly power, which might

> entail a hundred-fold greater liabilities on the part of the Government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of Section 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself. The government is, therefore, entitled to retain her in custody, and Rule 11 cannot be properly applied to such a case."

During the Haytian insurrection in 1883, Section 5283 seems to have been vigorously and successfully applied to the emergency presented.

During the present Cuban insurrection it cannot be said that there has been a fair test of the efficacy of the section, certainly it has not been applied with the vigor and success which characterized the efforts of the Government in 1883.

So much of the section as has come directly before the Supreme Court in the "Three Friends" case has been construed by it in accordance with the construction urged by the undersigned on the executive authorities of the United States since the beginning of the insurrection, and it is to be earnestly hoped that, when opportunity affords, the Supreme Court will give to the remainder of the section such a reasonable construction as will furnish a remedy for the mischief at which it was aimed.

This section forbids the fitting out and arming, the attempt to fit out and arm, the procuring to be fitted out and armed, the knowingly being concerned in the furnishing, fitting out OR arming, within the limits of the United States, of ANY VESSEL—WITHOUT ANY DESCRIPTION, LIMITATION OR RESTRICTION WHATSOEVER AS TO THE KIND OF VESSEL—with the intent that such vessel shall be employed in the service of any colony, district or people, TO COMMIT HOSTILITIES—WITHOUT DESCRIPTION, LIMITATION OR RESTRICTION AS TO THE KIND OR CHARACTER OF THE HOSTILITIES—against the subjects and property of any foreign prince with whom the United States are at peace.

The pamphlet reproduced in Part II of Appendix I, besides discussing at length the proper construction and application of Section 5283, includes in convenient contiguity the text of the opinion of the Supreme Court in the case of the "Three Friends," and the libels, opinions and sentences in four cases where vessels and arms, intended to be employed in the service of unrecognized insurgents, to commit hostilities, were condemned by courts of the United States under Section 5283 in the years 1883 and 1886.

There is another section of the law which it is well to notice in this connection, viz., Section 5287.

The United States thus extolled the importance and advantage

of the eighth section of the law of 1818, now Section 5287 of the Revised Statutes, before the Tribunal at Geneva (Case of the United States, page 114):

> "The Tribunal of Arbitration will also observe that the most important part of the American act is omitted in the British act, namely, the power conferred by the eighth section on the Executive to take possession of and detain a ship, without judicial process, and to use the military and naval forces of the Government for that purpose if necessary."

The United States complained that no provision being made in the law of Great Britain, and no steps being taken by her authorities to seize and stop the vessels, they were forced to believe that no complaints would be listened to and no steps taken unless accompanied by statements which could be used as evidence to convict a criminal before an English jury, and they insisted *that it was, in the judgment of the United States, no adequate excuse for the Queen's Ministers to profess extreme tenderness of private rights or apprehension of actions for damages in case of any attempt to arrest the ships.*

Undoubtedly during the present insurrection ships have been seized and detained by the vessels of the Navy acting under orders issued by virtue of Section 5287. But such seizures have failed to accomplish the object of that law because the United States has not insisted before the courts, either upon the adequacy of Section 5287 in itself, or, by supplementing action under Section 5287, by a firm and vigorous application of Section 5283.

Appendix I, Part III.

This Part is a reproduction of a pamphlet prepared by the undersigned entitled "Neutrality Laws of the United States as to Military Expeditions and Enterprises," which treats of Section 5286, and discusses and applies the opinion of the Supreme Court of the United States in the case of Wiborg *vs.* The United States, and includes the text of the opinion of the Supreme Court and the charges of the United States Judges in trials under that section, and the charge of the court in the trial of Luis under Section 5440 for conspiracy to violate Section 5286.

The introduction (pages I to VI) is very brief and seeks to bring together in convenient form the pertinent passages of the President's Proclamation and the decisions of Courts which should not be lost sight of in criminal prosecutions under this section.

Appendix II, Part I.

United States vs. "*Three Friends.*"

The steamer "Three Friends" appears to have made her first known trip on the 28th of February, 1896. (See Table, Expedition

No. 15.) The second trip of May 23 (Expedition No. 21) was the occasion of the libel filed against her which finally came before the Supreme Court. But before she was seized and proceeded against she had made her third, fourth, fifth and sixth trips (See Tables, Nos. 22, 24, 26 and 27), and the seventh (No. 31) was only prevented by the seizure.

After the seizure of this vessel she was released on bond by Judge Locke against the protest and objection of the United States Attorney. The decision of Judge Brown refusing to release the "Mary N. Hogan," libelled for forfeiture under Section 5283, was urged before Judge Locke, but he sought to take a distinction between the case of the "Three Friends" and the "Hogan." His decision, however, has since been overruled by the Supreme Court. After the release on stipulation, and pending the proceedings against her, the "Three Friends" again went to Cuba, but was driven off by a Spanish gunboat, with which she is alleged to have exchanged shots. (No. 32.)

Exceptions to the libel were filed by the owners on the 30th of November, 1896. Judge Locke decided to release the vessel on bond on the 3d of December, 1896. She went to Cuba on her eighth trip on the 14th of December, 1896. On January 18th, 1897, Judge Locke passed an order sustaining these exceptions and dismissing the libel. An appeal was taken to the Circuit Court of Appeals, and the Secretary of State and the Attorney General concurring in the view that it was of the first importance to have the questions decided by Judge Locke passed upon by the Supreme Court of the United States, application was made to the Supreme Court for a writ of *certiorari.*

On the face of the printed petition presented by the Attorney General of the United States on Friday, the 29th of January, 1897, the following statement is made:

> "Unlawful expeditions in aid of the Cuban insurrectionists, endangering the honor and dignity of the United States, are continually in preparation, and it is of great importance that the construction of the statutes intended to preserve the neutral and pacific relations of the United States should be settled as early as possible."
>
> "For these reasons the Secretary of State has requested that an application be made at once for a writ of *certiorari* to review the decision of the Circuit Court. The Attorney General concurring in this opinion, and believing the present to be one of the exceptional cases which warrant the issuance of such a writ without awaiting the decision of the lower appellate court, respectfully presents this application."

This petition will be found in Appendix II, Part I, pp. 1–3. On pages 3–6 is a stenographic report of the oral presentation by the

Attorney General of the petition for *certiorari*, further consideration thereof being postponed until Monday, February 1st, when brief in support of the petition (pp. 6–8) and one in opposition (9–14) were presented to the court. With the brief of the United States was filed for the convenience of the court the full text of the neutrality laws, the two Neutrality Proclamations of President Cleveland, and the opinion of Attorney General Hoar given in 1869, holding the neutrality laws applicable to unrecognized insurgents. These will be found pages 15–30. The undersigned prepared a brief as *Amicus Curiæ* on the preliminary application for the writ (pp. 35–46) which, however, for satisfactory reasons, was not filed or brought to the attention of the court.

A stenographic report of the oral application of the Attorney General for the writ of *certiorari* and the decision of the court granting the writ will be found at pp. 44–46.

The transcript of the record in the lower court sent up in response to the writ of *certiorari* is found pp. 46–72.

The brief of the United States on the merits will be found at pages 73 to 95, to which is appended a most interesting collection of laws and documents.

The briefs of W. Hallett Phillips and A. W. Cockrell, for the appellee, will be found at pages 127 to 160.

The undersigned believed it to be his duty and privilege to prepare and offer to the court a brief as *Amicus Curiæ* on the merits, which is found at pages 162 to 203.

At the beginning of the brief the undersigned said:

> "Having in the line of professional duty studied the subject in hand, he ventures, with diffidence, to hope that he may afford some aid to the court as one of its officers."

The consent of the counsel in the case having been obtained, the undersigned moved the court for leave to file the brief, which was graciously accorded on the day of the oral argument, February 15th, 1897.

The oral argument on that day was opened by the Honorable Edward B. Whitney, Assistant Attorney General, in behalf of the United States, who was followed by William Hallett Phillips, Esquire, and A. W. Cockrell, Esquire, counsel for the claimants of the vessel, and thereupon the argument was closed and the case submitted by the Honorable Judson Harmon, Attorney General of the United States, on behalf of the United States.

The opinion of the court (pp. 204–221) was rendered March 1st, 1897, on the reassembling of the court after its February recess.

The dissent of Mr. Justice Harlan (pp. 222–223) was orally announced on the same day, but was not filed for some time after.

It is to be regretted that the hearing on the merits in the case of the "Three Friends" was not had immediately after the decision of the Supreme Court, but the delay may well be referred to the change of administration in the whole Government, including the Department of Justice, which took place within a few days after that decision.

Appendix II, Part II.

The United States vs. *The "Laurada."*

In the last days of Mr. Cleveland's administration information was furnished to the United States authorities of the projected hostile expedition of the "Laurada," (No. 35) but whatever efforts were made to prevent her going, she successfully eluded the vigilance of the authorities and proceeded to Cuba, where she not only landed a hostile force but placed torpedoes at the mouth of the river where the landing was effected. On her return, detailed information being furnished to the authorities of the United States, the "Laurada" was libelled under Section 5283, but the case has not been brought to trial. It is proper to say that the United States District Judge for the District of Delaware died before the libel was filed and his successor has only lately been appointed. The libel printed in full constitutes Part II of Appendix II.

Appendix III, Part I.

United States vs. *Nunez and Dickman.*

Though the trial of this case resulted in a disagreement of the jury, the undersigned has thought it right to print the able and vigorous closing address on behalf of the Government by the Honorable Wallace Macfarlane, United States Attorney for the Southern District of New York, found at pages 1 to 24.

The charge of Judge Brown in the same case appears at pages 24 to 38.

Without the charge of the court it would seem that a conviction must have followed. Disregarding the argument of Mr. Macfarlane the jury might have found warrant in the charge to acquit the accused.

Appendix III, Part II.

United States vs. *Hart.*

This case cannot be better introduced than by reference to the extract which appears in this Report, p. 37, from the letter of Estrada3

Palma of the 10th of September, 1896, the whole letter appearing in Appendix I, Part I, at pages 53–56.

The record of the case is presented in Appendix III, Part II, just as it will be presented to the Circuit Court of Appeals, and in addition the able and eloquent arguments of Honorable James M. Beck, United States Attorney, are printed in full.

Judge Butler, who presided at the trial of Hart in 1883, in United States *vs.* Rand, a case growing out of the Haytien insurrection, had given a fair and reasonable construction to Section 5286 of the Revised Statutes, referring to military expeditions and enterprises, and a conviction followed.

In that charge he said:

> "*The statute involved is founded in a wise and beneficent purpose, the discharge of an important national duty towards other friendly powers, and its violation involves the national honor as well as the public peace.*"

In 1896, in United States *vs.* Wiborg, a case growing out of the present Cuban insurrection, the same learned judge expounded the law for the aiders and abettors of the Cuban insurrection exactly as he had done thirteen years before for those interested in the Haytien insurrection. In his charge he says:

> "No sympathy or prejudice must be allowed to influence your minds in passing on this case. *We have nothing to do with the controversies between the people of Cuba and the government of that island. We are concerned only with the execution of the law in this case.* We have only to consider whether the statute to which your attention has been called has been violated. It is our duty to see that the law is honestly and justly executed, that is all. *The peace and safety of the community so manifestly depend upon the faithful and honest administration of the law that no man can fail to see it.*"

In that case a conviction followed. The case was carried to the Supreme Court of the United States, and Judge Butler's construction of the law and the conviction of Wiborg were affirmed.

In the Hart case he thus concludes his charge:

> "In conclusion, I repeat, if the expedition was a military one, as charged, and the defendant here in Philadelphia provided the means for its transportation, with knowledge that it was a military expedition, he is guilty; otherwise he is not.
>
> "He is entitled to the benefit of any reasonable doubt that may exist, on a careful and impartial examination of the evidence. If your minds are not fully convinced of his

guilt he must be acquitted. On the other hand, if your minds are so convinced, he must be convicted. No suggestions of prejudice against, or sympathy for him, can be allowed to influence your verdict. Your duty and the public interests, as well as the defendant's rights, require that the case shall be decided exclusively on the testimony you have heard here.

"I repeat, this case has been tried with a great deal of care, most ably, as I think, by the counsel on both sides, with such a degree of good temper as is best calculated to reach a just result; and it is with you to determine how it shall be decided. I suppose a citizen is never called to the discharge of a higher duty than that of assisting in the administration of justice as jurors. To listen to anything else than the evidence heard from the witness stand, the arguments of counsel and the charge of the court, you would fail in discharging this important duty, and show yourselves unworthy of the confidence reposed in you. I want you to be thoroughly impressed with the importance of the case and to the importance of deciding it according to your best judgments as applied to the evidence. All parties must be satisfied with such a result."

Appendix III, Part III.

United States vs. *Luis.*

The indictment of Roloff, Luis, and Smith and the full stenographic report of the trial of this interesting case are printed in this part at pages 1 to 210.

The case was ably tried and argued, and the jury had their sense of manliness and fair play properly aroused in language like the following from Mr. Marbury's closing address:

"If we are going to fight Spain, we ought to come out into the open, and do it as the manly people that we have always claimed to be. But we haven't got the right—and I appeal to you to say as American men, with the sense of fair play to which we are so much accustomed, to support the assertion—we haven't got the right, pretending to be neutral, refusing to declare war, enjoying the benefits of neutrality, to permit a secret, underhand system of attack, to be carried on under our very noses, and make no effort to prevent it. That is not the way for an honest people to do. It is not the kind of thing we can afford to do; it is not in accord with the honor of the American name; it won't reflect any credit on us in the eyes of the rest of mankind if we do it."

Judge Morris presided at the trial with dignity, firmness and impartiality, and placed the reason and meaning of our neutrality law clearly before the jury in the following paragraph:

> "That nations at peace with the United States shall not permit military expeditions to be set on foot from their shores against our country is a rule of neutrality which the United States has strenuously insisted upon, and it is a matter of national honor that we ourselves shall honestly enforce our own laws, forbidding the same offense from our shores against other nations."

CONCLUSION.

A continued study of the neutrality laws of the United States, and their application to the existing emergency, convinces the undersigned that in spite of the various failures of justice which have occurred, the laws are sufficient in themselves to enable the United States to come up to the full measure of international duty which they required of Great Britain.

To accomplish this it is not necessary that the Executive should attempt any interference with the Judiciary, but only that the Executive should by its own example, in preventing and prosecuting violations of the law, impress both the courts and juries of the country with the gravity of the matter in hand.

As to criminal proceedings against persons, while many prosecutions have failed, yet the convictions, by juries of our citizens, in the cases of Wiborg, Luis, and Hart, demonstrate that under proper, efficient and vigorous prosecution of the law, there is no public sentiment sufficiently strong deliberately to encourage its violation or defeat its enforcement, and that the people can be depended upon to respond to every earnest demand of the Government for the enforcement of *all* its laws.

As to proceedings against vessels, and arms and munitions procured for the equipment thereof, the President has, by law, the right to seize and detain them to prevent violations of the statutes, and, in addition, by proceedings in admiralty against the things themselves tried before the court and without a jury, to effect their condemnation as forfeited.

> "Our Government," says Mr. Attorney General Harmon, in his opinion (Appendix I, Part I, page 20), "possesses all the attributes of sovereignty with respect to the present subject, and has for their exercise the appropriate agencies which are recognized among civilized nations, but our Constitution forbids the arbitrary exercise of power when the liberty or property of individual citizens is involved."

No exercise of arbitrary power is suggested or required, but the vigilant and vigorous exercise of the exceptional powers which are given by our own laws, may be rightly expected, when it is remembered that those laws are passed to enable us to fulfil a duty under the law of nations, the violation of which duty, through the permitted acts of lawless citizens or inhabitants, may entail vast and distressing consequences.

Respectfully submitted.

CALDERON CARLISLE,
Legal Adviser of the Spanish Legation.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX I.

PART I.

OPINIONS OF THE ATTORNEY GENERAL OF THE UNITED STATES AND THE LEGAL ADVISER OF THE LEGATION AS TO THE GENERAL QUESTION OF THE DUTIES OF NEUTRALITY IN THE PRESENT INSURRECTION.

TABULAR STATEMENTS AS TO EXPEDITIONS AND ENTERPRISES TO COMMIT HOSTILITIES.

TRANSLATION OF CUBAN DOCUMENTS.

PART II.

SECTION 5283, REVISED STATUTES UNITED STATES.

PART III.

SECTION 5286, REVISED STATUTES UNITED STATES.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX I.

PART I.

WASHINGTON, D. C., January 31, 1896.

To His Excellency E. DUPUY DE LOME,
Envoy Extraordinary and Minister Plenipotentiary
of His Catholic Majesty at Washington.

SIR: I have the honor to acknowledge your communication, enclosing a copy of a note which you addressed to the Secretary of State of the United States on the 19th of October last, and also a copy of an opinion of the Attorney General of the United States forwarded to you by the Secretary of State on the 21st ultimo.

My opinion is desired upon the subjects discussed in these enclosures.

The Attorney General in his opinion addressed to the Secretary of State, after reciting the substance of your communication of the 19th of October, a copy of which was referred to him, proceeds to comply with the request of the Secretary of State for a full expression of his views on the legal proposition stated in your communication.

The note of the 19th of October gives official notice that the insurgents in Cuba hold no port of entry, but that all points on the coast where lawful commerce can be carried are actually held and sufficiently garrisoned by Spain. It is not stated in your note that the insurgents hold no portion of the sea coast of Cuba, though such is believed to be the fact, but on the other hand there is no statement by the Attorney General that any part of the sea coast is in the possession of the insurgents; and it is certainly made clear in your note that the arms and munitions are in every case either accompanied by armed insurgents or delivered to armed insurgents, and that the vessels conveying them must be provided with a pilot who knows the movements and secret signals of the insurgents. Attention is called to the fact that whatever expedients are resorted to by taking arms and men from different places or in different ships, every such effort is a military enterprise against a friendly nation, and the failure to effectually prevent these acts of hostility is a breach of international duty on the part of the United States. And you invite the Secretary of State to bring your representations to the attention of the legal adviser of the President.

His views are given under five heads or subdivisions, but before considering these in their order, let me first note what the learned Attorney General admits in his opinion.

He admits the experience of the United States during former insurrections in Cuba of attempts to violate the laws of the United States intended to prevent violations of the obligations of the United States under the law of nations.

He admits that the laws of the United States are intended to prevent offenses against friendly powers, whether such powers should, or should not, be engaged in war or in attempt to suppress revolt.

He admits that the failure of the United States to pass such laws would not diminish their obligation under the law of nations.

He admits that the President, may, under the existing laws, employ the military and naval forces to disperse or prevent the departure from our territory of expeditions or men, arms, or munitions, which are manifestly part thereof, and that there is authority for putting under bonds persons justly suspected of an intention to engage in such enterprise, and he further admits that the Government of the United States possesses all the attributes of sovereignty with respect to the subject under discussion, and has for their exercise the appropriate agencies which are recognized among civilized nations.

He further admits that if persons supplying or carrying arms or munitions from a place in the United States are in anywise parties to a design that force shall be employed against the Spanish authorities, and that, either in the United States or elsewhere, before final delivery of such arms and munitions, men with hostile purposes towards the Spanish Government shall also be taken on board and transported in furtherance of such purposes, the enterprise is not commercial but military, and is in violation of international law and of our own statutes.

He further admits that it is the duty of the United States, of its own motion, when a state of war is declared or recognized by another country to use due diligence to discover and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such a war.

He further admits that even in the case of an insurrection in a foreign nation which does not itself acknowledge a state of war, actual notice of hostile expeditions against such friendly nation undertaken or threatened creates the duty of vigilance to prevent them, and the fact that the different elements intended to constitute a hostile expedition are separately prepared or transported does not change such duty but simply renders it more difficult to perform.

He further admits that if there should be a manifest failure of justice in a judicial proceeding intended to prevent and punish violations of our obligations under the law of nations which should result in the consummation of a hostile enterprise against Spain, causing her damage, capable of proof, the question would arise whether under the ruling of the Geneva tribunal Spain would be precluded by the judgment.

On the other hand the learned Attorney General asserts broadly that international law takes no account of a mere insurrection (confined within the limits of a country), which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own government, or by foreign governments.

That in the present case neither Spain nor any other country

has recognized the Cuban insurgents as belligerents, and they are, therefore, simply Spanish citizens with whom Spain is dealing within her own borders, and the fact that by common report they are engaged in armed resistance to her authority is merely a circumstance of suspicion to be considered in any inquiry which may be had concerning the conduct of persons within the United States who may be suspected of hostile intentions towards Spain.

He further insists that the President's proclamation of June the 12th did not change the situation in any respect. That as the failure to pass our neutrality laws would not diminish our international obligations so the passing of them does not increase such obligations. And he asserts that the *mere* sale and shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in the insurrection against the Spanish Government; that neither our Government nor its citizens have *means of knowledge* and therefore cannot be bound to take notice who are, and who are not, loyal subjects of Spain so long as their actions are confined to their own territory, and that the absolute right of individuals in the United States to sell such articles and ship them to whoever may choose to buy has always been maintained. He adds that *merchants* cannot follow their cargoes to Cuba in order to discover the character of their customers, nor can *mere* carriers conduct an investigation into the motives or designs of their consignees.

Referring to that part of the note of October 19th which gives official notice as to the ports recognized by the Spanish Government as open to commerce in Cuba, the learned Attorney General insists that the revenue and police regulations of a country have never been recognized by international law as coming within the rules regulating the conduct of other nations, and that the landing of arms and munitions *by stealth* in Cuba would be *mere* smuggling which must be prevented by the Spanish Government and in no wise concerns the United States.

Somewhat qualifying his broad assertion that international law takes no notice of an insurrection, the learned Attorney General says that it is by no means certain that the knowledge of the existence of a mere insurrection even when its location or alleged motives may be thought likely to lead to violations of our laws in that behalf, imposes any general duty of watchfulness the neglect of which would be just ground of complaint by the nation involved which does not itself acknowledge a state of war.

Finally he asserts that it cannot be truly said that our laws which have been tested by an experience of a century do not fully cover or adequately punish all violations of the duties imposed both by international law and by treaty on all persons within the United States; that the executive has no right to interfere with or

control the action of the judiciary in proceedings against persons charged with or concerned in hostile expeditions against friendly nations; that our Constitution forbids the arbitrary exercise of power when the liberty or property of individual citizens is involved, and that he does not think that the Government of the United States can be held chargeable with lack of diligence in not taking steps which would be inconsistent with the principles on which all republics are founded.

I proceed to consider the five views of the learned Attorney General in their order.

I.

The first proposition is that "international law takes no account of a mere insurrection (confined within the limits of a country) which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own government or by foreign governments."

It must be assumed that the Attorney General would not insist upon this proposition, so stated, further than to deduce from it the conclusion afterwards set out in his opinion, viz: "that the rules of international law with respect to belligerents and neutral rights and duties do not apply to the present case," i. e., the insurrection in Cuba; or it may at least be surmised that his mind is in an attitude of doubt on the subject, for he says, lower down, "It is by no means certain that knowledge of the existence of a mere insurrection, even when its location or alleged motives may be thought likely to lead to violations of our laws in that behalf imposes any general duty of watchfulness, the neglect of which would be just ground of complaint by the nation involved which does not itself recognize a state of war." Yet he makes it the starting point and controlling thought of his whole first view.

International law includes the relations and obligations of nations, one towards another, no less in time of peace than in time of war, and international law and usage provide the means for official information being obtained or given through ambassadors, ministers and consuls as to the state of affairs in a foreign country.

On the one hand it cannot be insisted that a nation is bound to take notice of the existence of an insurrection in another country, as it is bound to take notice of a recognized state of public war or belligerency, but on the other hand it cannot be denied that it is both the right and duty of one nation, when satisfied of the fact, either through its own representatives in the foreign country, or through the repretatives of the foreign country received by it, of the existence in a neighboring territory of "serious civil disturbances accompanied by armed resistance to the authority of the established government" of such foreign country, to take notice of such a condition

of affairs and to give warning to its citizens and inhabitants in the discharge of the obligation which one friendly nation owes to another, and as a measure of precaution to prevent the violation of this obligation. None of the authorities cited by the Attorney General support the broad and unqualified statement with which he introduces his first proposition, and many authorities might be cited to the contrary, though it would seem that in the present case the proclamation of the President of the United States, attested by the Secretary of State, on the 12th of June, 1895, is sufficient to show not only the principle which I have stated but its recognition by the United States. See also the following proclamations by the Presidents of the United States.

Madison, September 1, 1815.
Van Buren, January 5, 1838, and November 25, 1838.
Tyler, September 1, 1841.
Taylor, August 11, 1849.
Fillmore, April 25, 1851.
Pierce, December 8, 1855.
Buchanan, October 30, 1858.
Johnson, June 6, 1866.
Grant, October 12, 1870.
See also Act of March 10, 1838, 5 Statutes, 212.

It cannot be supposed that the President's proclamation of 1895, was based merely on common report, and it must be assumed that he was officially satisfied through the Secretary of State that the armed resistance to the lawful Spanish authority in Cuba was a fact, and a fact which bore upon the international obligation of the United States towards Spain and made it expedient to proclaim it and give warning.

Again, while in ordinary transactions "the equality and dignity of nations" may prevent one nation from taking notice of what passes between a foreign nation and its own subjects within the limits of such foreign nation, the very case of serious civil disturbance accompanied by armed resistance to the authority of the established government of a foreign nation, gives other nations the right, if not the duty, of keeping themselves informed with a view to the possible occasion of the exercise of another right under international law, namely, that of recognizing a state of belligerency.

It cannot be admitted, therefore, as the learned Attorney General says, that the President's proclamation of June 12th, does not change the situation in any respect, because it was a distinct recognition of the obligations of special vigilance imposed upon the United States in the discharge of its international duty towards Spain, a power with which, the proclamation declares, the United States are, and desire to remain, on terms of peace and amity. The Attorney General says the proclamation was simply made out of

abundant caution in view of the notorious fact that such an insurrection existed and that judging from experience during former insurrections in Cuba, attempts to violate our laws might be made; but the President on the face of the proclamation declares that he issues it not only in recognition of the laws aforesaid (that is, the laws of the United States), but also in the discharge of the obligations of the United States towards a friendly power (that is, an obligation under international law), and further as a measure of precaution.

The admitted experience during former insurrections in Cuba doubtless furnished an additional justification for the proclamation, if it did not distinctly increase the obligation of warning and vigilance. The laws of the United States are, as the Attorney General observes, intended not only to carry out the obligations imposed upon the United States while occupying a position of neutrality towards belligerents but also to prevent offenses against friendly powers (which are clearly offenses against the law of nations) whether such powers should, or should not, be engaged in war or in attempt to suppress revolt. It is not pretended that the passing of these laws has increased international obligation, but it is insisted, as the Attorney General admits, that the failure to pass such laws would not diminish international obligations, and indeed that the laws themselves and the administration of them by the municipal authorities of the United States cannot measure or limit the international responsibility of the United States.

The citations of authority under this head by the Attorney General are mostly upon the disputed question whether unrecognized insurgents may be treated as pirates. But no such question has arisen during the present insurrection and even if unrecognized insurgents, under certain circumstances, should be treated as pirates, no reason appears for allowing to such pirates in their attacks on a friendly power the aid which is denied to recognized belligerents, and if they are not held to be pirates, the existence of an armed insurrection, solemnly admitted by the President's proclamation, can certainly not diminish obligations which rest upon all nations, even in time of peace, not to knowingly permit injuries by their citizens or inhabitants to a friendly power.

Vatell Book, II Ch., 6 Sec. 72.
Phillimore, Vol. I, p. 232.
Calvo, Vol. I, Sec. 355.
Proclamations, *ubi supra.*

II.

The second proposition of the learned Attorney General is that the mere sale or shipment of arms or munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they

are to be used in the insurrection against the Spanish Government; that the right of individuals in the United States to sell such articles and ship them to whoever may choose to buy has always been maintained, and that international law imposes no duty upon the Government of the United States with respect to such transactions; and for this proposition he cites well known cases and text writers.

But no case during this insurrection yet brought to the attention of the United States, whether through its Executive, or any proceedings before its commissioners and courts, has presented the matter of the "mere sale" or the "mere shipment" of arms to Cuba; nor has there ever been any question as to the right of individuals in the United States to *merely* sell and *merely* ship to whoever may choose to buy. The authorities cited by the Attorney General under this head for the most part show that he is speaking of the right of commerce in contraband, a commercial right recognized even in time of war subject to well understood risks and responsibilities by those engaging in this hazardous trade. If a blockade runner can by any means elude the vigilance of the blockading squadron she has simply accomplished successfully a hazardous commercial venture where the object is trade and the reward money. Such was the case of the "Florida," 4 Ben. 452.

Here is no question of the commercial rights of merchants or others in the United States. In every instance any commercial transaction with reference to the arms or munitions or vessels intended for these expeditions or enterprises have been completed in the United States; the arms and munitions, and the services of the vessels concerned, have become the property of agents of the Cuban insurgents; nothing connected with their shipment to the Cuban insurgents in the field can have any real commercial character; everything done, or attempted to be done, to give it such character, is a fraud upon the laws of the United States and the law of nations.

There can be no question of any duty of any "merchant" following his cargo to Cuba, and no question of any "mere carrier" conducting "an investigation of the motives or designs of consignees."

The owners of the cargo are the Cuban insurgents and their agents; there are in reality no consignees in the commercial sense; the carrier acts at his peril; if he knowingly aids and abets the violation of law he is guilty with the rest. If he, or any of his officers and crew, are honestly deceived and are ignorant of any unlawful design they are protected as in other cases; but it is scarcely conceivable that a captain should be ignorant of the character and purposes and destination of his passengers and cargo taken on and landed under the extraordinary circumstances disclosed. U. S. *v.* Rand, 18 Fed. Rep. Nor is it contended that the Government and citizens of the United States are required to take notice who are and who are not loyal subjects of Spain *so long as their actions are*

confined to Spanish territory; but the Government of the United States has been and is asked simply *to take notice of what is done within the territory of the United States by those acting in aid and furtherance of armed resistance to the established authority of Spain in Cuba, in an insurrection, of which knowledge by the Government of the United States is officially admitted and proclaimed.*

Again it is not pretended by Spain that its revenue and police laws are recognized by international law as coming within the rules regulating the conduct of the United States or any other nation. What she does contend is that as the United Stated admits and proclaims official knowledge of an insurrection against the established authority of Spain in Cuba, which is not recognized by Spain or any other nation as a war, and in which Spain cannot exercise on the high seas or beyond her own limits any rights of war for her own protection she is bound to rely on the good faith of neighboring friendly nations in the discharge of their obligations under international law not to permit, under the false and fraudulent pretense of commerce, which Spain has no right and no means to efficiently investigate outside of her own dominions, the giving of aid by military expeditions or enterprises begun or set on foot, or the means for which are prepared and provided within the territory of the United States.

All the facts brought to the attention of the United States through its executive and judicial departments confirm what is shown in the note of October 19th, that what we have here to deal with is not the "mere sale" or "mere shipment" or "mere commerce," in any sense, but from the facts of each case and from the conditions of which you give official notice (which the United States is of course at liberty to verify through its own representatives in Cuba) that every shipment of arms and munitions to the insurgents in Cuba from the territory of the United States must of necessity be a military expedition or enterprise, or a part of a military expedition or enterprise, with no element of peaceful commerce about it. Whatever authority the Itata case (United States *v.* Trumbull et al., 48 Federal Reporter, page 99) may have in the courts of the United States as a construction of the United States statutes, it would be difficult under the law of nations, on the facts found by the court, to defend the decision or to have relieved the United States of international responsibility if it had been possible for any nation to assert it. The trial took place in the United States District Court in California in 1891, after the Congressional party of Chile, which owned and fitted out the Itata, had been recognized on the fourth of September of that year by the United States as the established Government of Chile. The government to which the United States owed an international duty in the matter of the Itata had ceased to exist before the opinion of the learned Judge of the District Court was delivered. And although no nation then existed

which had the right to question whether the United States had in the matter of the Itata through its officers and courts fulfilled its duty, no nation could be bound to consider such a disposition of such a case as furnishing any precedent under the law of nations, and it is not believed that the decision can be generally accepted as in accordance with international law. The decision in the Itata case dealt only with the construction of a United States statute, and even if that construction is correct, the failure to pass efficient laws to prohibit offenses against friendly powers cannot, as the Attorney General admits, "diminish our international obligations." So we contended at Geneva. So that great tribunal decided.

Although the present insurrection is incapable of being recognized as belligerency, knowledge of its existence, is, as already stated, officially admitted by the United States in connection with its obligations to Spain under the law of nations. All that is claimed is admitted by the proclamation, i. e., that the United States and all its officials had the duty of due vigilance in preventing violations of international obligations of the United States in connection with the proclaimed insurrection. The past experience of the Government of the United States in the former insurrections alluded to by the Attorney General, did not diminish but increased the measure of due vigilance and diligence.

But even if there were no insurrection in progress the international obligations of the United States towards Spain would still exist.

United States *v.* Lumsden, 1 Bond 5.
Vatell Book, 2 Ch. 6, Sec. 72.
Phillimore, Vol. 1, p. 232.
Calvo, Vol. 1, Sec. 355.
Proclamations, *ubi supra.*

If a nation permits military expeditions to start from its territory which have been fully assembled within its jurisdiction, or of which the constituent parts start separately to assemble on the high seas or within the jurisdiction of some other power[1]; if such expeditions are destined, directly or indirectly[2], for the possessions of a friendly nation; if their purpose is to transport and introduce within its borders men, arms or materials of war, to be used in commencing or assisting hostilities against such friendly nation; if it is intended to protect this transportation or introduction, where necessary and practicable, by armed forces either accompanying the expedition or meeting it by arrangement, on its arrival;

(1) The Alabama, Florida, &c., Snow, p. 425; the Mary A. Hogan, 18 Fed. Rep. 529.
(2) U. S. *v.* Rand, 17 Fed. Rep. 142; Springbok, Cobbett, 244; William, 5 C. Rob. 335.

in such case the nation so permitting the departure, whether through deficiencies in its municipal laws, miscarriage of justice in its courts, or negligence of its executive officers, is guilty of a breach of international duty.[3]

This is a wholly different matter from the case of ordinary contraband trade alluded to in the second "view" where munitions of war and the like are carried to a port in possession of the forces to whom they are expected to be sold, or where they are smuggled by stealth or fraud into territory held by the opposing party.[1] In the case of the "Meteor" and "Santissima Trinidad," types of the cases by which the legality of such trade is upheld, the vessels in question were sent out unprepared to resist search or seizure or to use force in their endeavors to reach their destination. That is to say, the enterprises were wholly peaceful. Moreover, they went, not as the property of the insurgents or their agents, "nor destined for the use of the insurgent forces," but as the property of neutrals, seeking a market and ready to be sold to either one of the belligerents or to third parties. In other words, the enterprise was bona fide commercial; *animo commercandi* and not *animo adjuvandi*. (See distinction between "Meteor" and "Alabama" cases, Snow, p. 420 and also Calvo Droit Int. Sec. 2327.)

The expeditions now in question are, as already stated, and as in principle admitted by the Attorney General in his third view, neither peaceful nor commercial. They strongly resemble the expedition which was in question in U. S. *v.* Rand, above cited. In that case the "Tropic" sailed from Philadelphia with a cargo of arms, &c., for Inagua, a British port. There she secretly took on board a body of men whom she put ashore in Hayti and under whose protection she also landed her cargo.

III.

The third view of the learned Attorney General practically concedes all that the note of the 19th of October asserts as to what constitutes a military expedition or enterprise, and expressly admits that if persons supplying or carrying arms and munitions from a place in the United States are in any wise parties to a design that force shall be employed against the Spanish authorities, or that either in the United States or elsewhere before final delivery of such arms and munitions, men with hostile purposes towards the Spanish Government shall also be taken on board and transported in furtherance of such purposes the enterprise is not commercial but military and is in violation of international law and of our own statutes.

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[3] Geneva Award as to acquittal of "Orelo," at Nassau, 1 Whart. Digest, 16; 3 Whart. Digest, 329a.

[1] "Santissima Trinidad," 7 Wheat. 340; "Meteor," 3 Whart. Digest, 561; 11 Opinions Attorney General, 408; 1 Kent's Com. 142.

IV

The fourth view of the learned Attorney General deals with the subject already discussed, of the duty of the United States to use diligence to discover and prevent the formation in or the departure from the territory of the United States of military expeditions or enterprises against a friendly power.

The Attorney General admits that it is the duty of the United States to act of its own motion when a state of war is declared or recognized by another country. He doubts if knowledge of the existence of a mere insurrection imposes any duties of watchfulness, the neglect of which would be just ground of complaint. But he admits that actual notice of hostile expeditions against a friendly nation creates the duty to prevent them, and that the fact that different elements intended to constitute a hostile expedition are separately prepared does not change the duty but merely renders it more difficult to perform.

The learned Attorney General insists, however, that the obligation is one of diligence and not a guaranty against such expeditions. And this general proposition may be readily admitted, especially with the added qualification that "what constitutes diligence must always depend on the circumstances of each case." The principles treated of under this fourth view were all elucidated and enforced by the arguments, deliberations and decisions at Geneva.

V.

The fifth view deals with our laws, which the learned Attorney General says fully and adequately punish all violators of the duties imposed both by international law and treaty on all persons within the United States. It is not inopportune in this connection to refer to the proclamations hereinbefore cited and to the act of 1838 (March 10, 1838, 5 Statutes at Large, p. 212) and to call special attention to the President's proclamation of January 5th, 1838, and his special message, in which last, alluding to recent events he says they show "that our laws are insufficient to prevent invasions from the United States of neighboring powers." The President stated that those laws gave the means of punishment, but not prevention, and recommended their revision. Mr. Buchanan, afterwards Secretary of State and President of the United States, in reporting to the Senate, as Chairman of the Committee on Foreign Relations, the act of March 10, 1838, expressed the opinion that the duties of good neighborhood and the preservation of peace and quiet along the borders required that the right of our citizens under the law of nations should be abridged in furnishing arms, &c., to the insurgents. The Senate bill he said had contained a few plain and simple but precise provisions intended to meet this difficulty. He

stated that the bill as amended in the House was not satisfactory but the crisis demanded that we adopt some measure promptly and he expressed the hope that before the two years (to which the act was limited) should elapse some well considered and carefully drawn bill might be adopted on the subject. (Benton's Debates, Vol. 13, pp. 638–641.)

In November, 1838, the President issued a second proclamation, notwithstanding the existence of the act of 1838, proclaiming the fact that disturbances had broken out anew and giving fresh warning to citizens and inhabitants.

It is notable that the two proclamations of President Van Buren in 1838 and that of President Taylor in 1841 are all entitled "enjoining neutrality as to Canada," and both of President Van Buren's warn all persons not to "compromit the neutrality of this Government." And though it is scarcely worth while to enter into a discussion of the propriety of the term in the limits of this opinion, much could be said to show that the titles of the proclamations, as well as that of our laws are not incorrect.

A more modern instance of a recommendation for a change in our neutrality laws, which, however, did not result in a statute like the previous instance in 1838, was the message of President Arthur in 1884. 3 Whart. Dig., p. 621.

"I recommend that the scope of the neutrality laws of the United States be so enlarged as to cover all patent acts of hostility committed in our territory and aimed against the peace of a friendly nation. Existing statutes prohibit the fitting out of armed expeditions and restrict the shipment of explosives, though the enactments in the latter respect were not framed with regard to international obligations, but simply for the protection of passenger travel. All the statutes were intended to meet special emergencies that had arisen. Other emergencies have arisen since." . . .

The sufficiency of municipal laws to enable a nation to fulfil its international duties is a matter to be inquired into and remedied by itself; and any defects therein cannot be pleaded as a justification or extenuation of an international wrong to another sovereign power. So we contended at Geneva, and so it was there decided.

Mr. Fish, Secretary of State, writing in 1869, uses the following pertinent language (Whart. Digest, Vol. 3, p. 653):

"We hold that the international duty of the Queen's Government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign power. The municipal law was but a means of repressing or punishing individual wrong doers; the law of nations was the true and proper rule of duty for the government. If the municipal laws were defective, that was a domestic inconvenience of concern only to the local government and for it to remedy or not

by suitable legislation as it pleased. But no sovereign power can rightfully plead the defects of its own penal statutes as justification or extenuation of an international wrong to another sovereign power."

The learned Attorney General says, after speaking of the fairness and efficiency of our courts, that "it is therefore ordinarily due diligence to cause the arrest and trial by our courts of persons charged with engaging in enterprises against the authority of Spain which our laws forbid." This is scarcely consistent with our attitude towards Great Britain above mentioned, but even the Attorney General admits by his careful statement that it is subject to limitations by the use of the word "ordinarily," and the discussion in the succeeding paragraph of a failure of justice resulting in the consummation of a hostile enterprise causing damage capable of proof. In this connection the Attorney General says a question would arise whether under the ruling of the Geneva Tribunal Spain would be concluded by the judgment.

It cannot for a moment be admitted that in such an event Spain or any tribunal hearing her claims under the laws of nation could be concluded by a municipal judgment in a criminal case.

The Supreme Court of the United States, speaking in the Prize Cases (2 Black, 635,) of an objection which might have some weight on the trial of an individual in a criminal court, says: "But precedents from that source cannot be received as authoritative in a tribunal administering public and international law."

It is said by the Attorney General that the determination of such a question would be affected by the fact that some proceedings have been commenced on the complaint of the Spanish Government, and they were afforded and embraced the opportunity to present evidence or attend by counsel. But this fact could certainly have no effect even under the principles of municipal law. Spain was in no sense a party, and could not be concluded under the municipal law of the United States in a civil action (if she could invoke that law for such a purpose) by a verdict on criminal indictment. The United States was the prosecutor, and was seeking to vindicate its laws. Mr. Fish, writing in 1871, III Whart. Digest, p. 618, says:

"The position which the United States assumed, and has maintained, . . . has been that when reasonable grounds were presented to a government, by a friendly power, for suspicion that its peace is threatened by parties within the jurisdiction of that government, it is the duty of the latter to become the active prosecutor of those threatening the peace of the former."

It is doubtless true, as a matter of municipal law, "that the Executive has no right to interfere with or control the acts of the judiciary" but the Federal Government which, as the Attorney General remarks, possesses all the attributes of sovereignty with

respect to the present subject and which is composed of the legislative, judicial, and executive branches, constitutes the nation whose responsibility is involved, and as to this I cannot better express the law of nations than by quoting the words of Mr. Bayard, when Secretary of State in 1886:

"In international relations and the maintenance of international duties the action of the judiciary in Chile is to be treated, when assumed by the Government, as the act of the Government." (1 Whart. Digest, 16.)

And even the decisions of prize courts of last resort, although prize courts are courts specially recognized by the law of nations, cannot conclude a foreign nation, but in the case of a capture in violation of the law of nations a sentence of condemnation simply fixes the responsibility of the captor's sovereign.

The pertinent provisions of the Revised Statutes, Section 5287, giving the President the power to use the land and naval forces of the United States, or the militia, for the purpose of preventing the carrying on of any military expedition or enterprise from the territories of the United States, are as follows:

"In every case . . . in which any military expedition or enterprise is begun, or set on foot, contrary to the provisions and prohibitions of this title . . . it shall be lawful for the President or such person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or the militia thereof, . . . for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district or people with whom the United States are at peace."

It will be noted that the language of the statute does not contemplate the dispersing of an organized body of men in open defiance of the authority of the Government but is expressly directed to the prevention of the violation of Section 5283 and the other sections of the Title "Neutrality" in the Revised Statutes.

The foregoing discussion leads me to the following conclusions:

First. That the United States now owes to Spain all the international duties which one friendly nation owes to another in time of peace, and can owe no international duty to the insurgents.

Second. That by admitting officially and proclaiming to its citizens and inhabitants knowledge of the existence of the insurrection in Cuba, the United States admits knowledge of a fact which increases its duty of vigilance in detecting, and diligence in preventing, the beginning or setting on foot, or providing or preparing the means for, military expeditions or enterprises by its citizens or inhabitants within its territory against Spanish territory.

Third. That as to mere commerce Spain can, under present conditions, claim no right under the law of nations to interfere with it

outside her own borders; which fact, however, does not lessen, but increases the obligation of the United States to prevent military expeditions and enterprises against Spain from being begun, or set on foot, or the means for such being prepared and provided, within the territory of the United States by the organized and authorized agents of the insurgents under the false and fraudulent pretense of mere peaceful and lawful commerce.

Fourth. That even admitting in the present state of the law that citizens of the United States may sell arms and munitions of war to anybody wishing to buy them and able to pay for them, and that the organized and authorized agents of the Cuban insurgents within the United States may thus obtain large quantities of arms and munitions of war to aid the insurrection, the commercial transaction must end here, because it is impossible, in fact and in law, by mere commerce for the insurgents' emissaries in the United States to get these arms and munitions to the insurgents in the field, for whom they are purchased, but in order to accomplish this, or attempt to accomplish this, a military expedition or enterprise must be begun, or set on foot, or the means must be prepared and provided, by the insurgents, or their agents, within the territory of the United States.

Fifth. That the municipal laws which in themselves or by reason of the method of their administration by municipal, judicial or executive officers, permit the repeated consummation of hostile enterprises against a friendly nation can furnish no justification or extenuation for any international wrong or damage as against such friendly nation.

I have the honor to be Sir, Your Excellency's most obedient servant,

CALDERON CARLISLE,
Legal Adviser of the Spanish Legation.

NOTE.

The opinion of the Attorney General of the United States referred to in the foregoing opinion of the legal adviser of the Spanish Legation is printed on the next page from the copy transmitted by the Secretary of State to the Spanish Minister on December 21, 1895.

DEPARTMENT OF JUSTICE.

WASHINGTON, D. C.

The Honorable the Secretary of State:

SIR: I have the honor to comply with your request by letter of 5th *ultimo*, for a full expression of my views on the legal propositions stated on the communication of the Spanish Minister to you of Oct. 19th, a copy of which you enclose.

Referring to the President's proclamation, in June last, concerning the insurrection in Cuba, to opinions expressed by officers of this Government, to comments upon recent decisions in cases involving charges of violations of our neutrality laws, and to acts of which he has made complaint, the Minister states at length the positions he takes with regard to the rules of international law by which the course of the United States should be directed. The acts complained of were the shipment of arms and munitions of war from ports of the United States under circumstances showing that they were destined for the use of the insurgent forces in Cuba.

The Minister says that commerce with that Island cannot be carried on except through Havana and six other ports which are open to commerce in general, and eight ports which are partially open to commerce; that all these ports are held by the Spanish Government with a sufficient force; that, in order to ship arms and munitions of war to the insurgents, it is not sufficient to elude the Spanish cruisers about the Island and the garrison at such ports, but vessels carrying such supplies must have pilots who are advised of the movements of the insurgents and have a system of signals with them, by means of which the cargoes are delivered to armed bodies prepared to use force; and that, in many cases, such vessels also carry men who are prepared to resort to force to effect the landing of the cargoes. It is, therefore, evident, he says, that a vessel carrying arms and munitions intended for the insurgents, cannot deliver them without committing acts of force which make the enterprise military and not commercial. Further, he says, such vessels "may, if cleared for an intermediate port, or if its cargo be taken on board at one port and its men at another, whether that port be in the United States or another country, or if the munitions of war and arms go in one vessel and the men in another, be simply a *part* of a filibustering expedition, but it is, in my judgment, no less a military expedition."

He claims on the authority of "most eminent writers on international law," that the domestic laws of this country need not be considered by him in asking for the fulfillment of our international obligations, and expresses the opinion that when the departure of arms and munitions of which he has furnished information is permitted, or when the persons engaged have been arrested at the moment of embarking and are discharged, not only is international law vio-

lated but the true spirit and meaning of the internal laws of the United States are disregarded.

My views are as follows:

(1) International law takes no account of a mere insurrection, confined within the limits of a country, which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own Government or by foreign governments. Cobbett Leading Cases on Int. Law, 87. Glenn's Int. Law, Sec. 75. Calvo, Droit Int. T. 1, p. 178.

This is said to result from the equality and dignity of nations which prevent other nations from taking notice of what passes between a particular one and its own subjects within its own limits, (Abdy's Kent's Int. Law, p. 46–7), except in those rare cases where atrocities or barbarity provoke intervention in the interest of humanity.

The facts so far as they are known do not bring the Cuban insurrection within the principle of the Prize Cases, 2 Black, 635. No state of war is acknowledged by Spain and, if the insurgents are in possession of any seaports, no blockade has been declared.

It follows therefore, that the rules of international law with respect to belligerent and neutral rights and duties do not apply to the present case. Neither Spain nor any other country has recognized the Cuban insurgents as belligerents. They are, therefore, simply Spanish citizens with whom Spain is dealing within her own borders, and the fact that, by common report, they are engaged in armed resistance to her authority, is merely a circumstance of suspicion to be considered in any inquiry which may be had concerning the conduct of persons within the United States who may be suspected of hostile intentions toward Spain. But neither our Government nor our citizens have means of knowledge, and therefore, cannot be bound to take notice who are and who are not loyal subjects of Spain, so long as their actions are confined to their own territory.

The President's Proclamation of June 12 did not change the situation in any respect, but was simply made out of abundant caution in view of the notorious fact that such insurrection existed and that, judging from experience during former insurrections in Cuba, attempts to violate our laws might be made.

While called neutrality laws because their main purpose is to carry out the obligations imposed upon the United States while occupying a position of neutrality towards belligerents, our laws were intended also to prevent offences against friendly powers, whether such powers should or should not be engaged in war or in attempting to suppress revolt. But as our failure to pass such laws would not diminish our international obligations, so passing them does not increase such obligations.

(2) The mere sale or shipment of arms and munitions of war by

persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in an insurrection against the Spanish Government. The right of individuals in the United States to sell such articles and ship them to whoever may choose to buy has always been maintained. The goods, and in some cases, perhaps, the ship carrying them, are subject to seizure by the government within whose jurisdiction they may come, if its domestic laws or regulations are violated, but international law imposes no duty upon our Government with respect to such transactions. "The Santissima Trinidad," 7 Wheaton, 283 (340); "The Bermuda," 3 Wall. 514; U. S. *vs.* Trumbull, 48 Fed. Rep. 99; "The Itata," 66 Fed. 505; Hendricks *vs.* Gonzales, 67 Fed. 351; 2 Pradier Fodere Droit Int. Pub., Sec. 469; Cobbett's Leading Cases on Int. Law, 167–171; Phillemore's Int. Law, Vol. III, 274; Snow's Cases on Int. Law, 408–420; 11 Op. Atty. Gen. 451. This principle applies the more strongly in a case like the present than in one where insurgents have been recognized as belligerents. Merchants cannot follow their cargoes to Cuba in order to discover the character of their customers; nor can mere carriers conduct an investigation into the motives or designs of consignees. Such restrictions on commerce would be most onerous, and have never been recognized.

The sale and shipment or carriage of such articles to Cuba does not become a violation of international law merely because they are not destined to a port thereof which is recognized by the Spanish Government as open to commerce, nor because they are to be, or are, landed by stealth. If taking arms, etc., into Cuba, or landing them at particular times or places, be contrary to Spanish laws or regulations, so doing would nevertheless be mere smuggling which must be prevented by the Spanish Government and in nowise concerns that of the United States. The revenue and police regulations of a country have never been recognized by international law as coming within the rules regulating the conduct of other nations. The Steamship Florida 4 Ben. 452, Abdy's Kent Int. Law, 491. Snow's Cases on Int. Law, 497.

(3) If however, the persons supplying or carrying arms and munitions from a place in the United States are in anywise parties to a design that force shall be employed against the Spanish authorities, or that, either in the United States or elsewhere, before final delivery of such arms and munitions, men with hostile purposes towards the Spanish Government shall also be taken on board and transported in furtherance of such purposes, the enterprise is not commercial, but military, and is in violation of international law and of our own statutes. R. S. 5286; U. S. *vs.* Rand, 17 Fed. 142; U. S. *vs.* "The Mary N. Hogan," 18 Fed. 529; U. S. *vs.* 214 Boxes of Arms, etc., 20 Fed. 50; The Conserva, 38 Fed. 431; U. S. *vs.* Lumsden, 1 Bond, 105.

(4) The duty of the United States when a state of war is declared or recognized by another country is of its own motion to use diligence to discover and prevent, within its borders, the formation or departure of any military expedition intended to carry on, or take part in, such war. 3 Whart. Dig. Int. Law, pp. 630, 637. It is by no means certain that knowledge of the existence of a mere insurrection, even when its location or alleged motives may be thought likely to lead to violations of our laws in its behalf, imposes any general duty of watchfulness, the neglect of which would be just ground of complaint by the nation involved, which does not itself acknowledge a state of war. Actual notice, however, of hostile expeditions against a friendly nation, undertaken or threatened, creates the duty of vigilance to prevent them; and the fact that the different elements intended to constitute a hostile expedition are separately prepared or transported, does not change such duty, but merely renders it more difficult to perform. But the obligation is one of diligence and not a guaranty against such expeditions; and what constitutes diligence must always depend on the circumstances of each case. 3 Whart. Dig. Int. Law, p. 639. Creasy Int. Law, pp. 160–4.

(5) It cannot be truly said that our laws, which have been tested by the experience of a century, do not fully cover and adequately punish all violations of the duties imposed both by international law and by treaty on all persons within the United States. Nor can it be charged that our courts are either unfair or inefficient. I do not understand the expressions in the minister's letter to indicate anything more than dissatisfaction at the result of some recent prosecutions wherein strong suspicion appeared to lack convincing proof. It is, therefore, ordinarily, due diligence to cause the arrest and trial by our courts of persons charged with engaging in enterprises against the authority of Spain which our laws forbid.

If there should be a manifest failure of justice in such a judicial proceeding, resulting in the consummation of a hostile enterprise against Spain causing her damage capable of proof, the question would arise whether under the ruling of the Geneva Tribunal (III Whart. Int. Law Dig., Sec. 329, p. 193; Id., Sec. 238, pp. 672–3; and 11 Op., p. 117), Spain would be concluded by the judgment. This question would be somewhat differently presented in cases where such proceedings are commenced on the complaint of the Spanish authorities and they are afforded and embrace the opportunity to present evidence or attend by counsel. I do not understand, however, that I am now required to determine the question.

It has been held that persons justly suspected of an intention to engage in such enterprises may be required by the courts to give bond not to do so. United States *vs.* John A. Quitman, 2 Am. Law Reg. 645. Persons in charge of any armed vessel may be re-

quired to give like security as a condition of clearance. R. S., Secs. 5289, 5990.

It is certain, however, that the Executive has no right to interfere with or control the action of the Judiciary in proceedings against persons charged with being concerned in hostile expeditions against friendly nations. The President may employ the military and naval forces to disperse or prevent the departure from our territory of any such expedition or of any men, arms or munitions which are manifestly parts thereof; and, being a co-ordinate authority, he would not be precluded from so doing, in a proper case, by the action of the Judiciary. But it is plain that such means are practicable only when there is open defiance of the authority of the government by an organized body of men.

Occasions may be imagined when the summary process of martial law might perhaps be resorted to against the persons composing such a body. But in all such cases as those which have come to the notice of the Government, these conditions do not exist and the judicial authority is the only one which can be properly or efficiently invoked. (See Mr. Bayard to the Spanish Minister, 3 Whart. Dig. Int. Law., p. 625.)

Our Government possesses all the attributes of sovereignty with respect to the present subject, and has for their exercise the appropriate agencies, which are recognized among civilized nations, but our Constitution forbids the arbitrary exercise of power when the liberty or property of individual citizens is involved. It cannot therefore resort to some measures which are still possible in some countries. But I do not think that it can be held chargeable with lack of diligence for not taking steps which would be inconsistent with the principles on which all republics are founded.

Very respectfully,

JUDSON HARMON,
Attorney General.

TRANSLATION OF DOCUMENTS

EMANATING FROM THE CUBAN REVOLUTIONARY PARTY DELEGATION IN NEW YORK.

[Memorandum of the Reunion of the 16th of July.]

In the City of New York, the 16th of July, 1896.

Being assembled Messrs. Major General Carlos Roloff and Doctor Joaquin Castillo Duany, Nestor Ponce de Leon, and two more gentlemen whose names are omitted, under the Presidency of Mr. Tomas Estrada Palma, Plenipotentiary Delegate of the Republic of Cuba in foreign countries, Mr. Estrada showed that having the necessity of collecting in a short time the resources of money necessary to send to Cuba in these next months arms and munitions of war in the greatest possible quantity, and making use of powers with which he is invested, in accord with and after consulting Major General Roloff, Secretary of War of the Republic, and Doctor Joaquin Castillo Duany, Sub-Delegate, he had determined upon the creation of a Committee of Ways and Means, destined to advise or aid the Delegation, in order to obtain said resources, and had named in order to form it Messrs. ————

without prejudice to the right to enlarge it in the future, having convened the present Reunion with the object of organization, which said gentlemen made evident that they were disposed to aid the Delegation in its patriotic labor. Explained by Mr. Estrada the actual state of the war and the necessity of sending shortly to the liberating army arms and munitions of war in great quantities, and to raise for that purpose a respectable sum, and after a brief discussion it was made evident without prejudice to the utilization of other resources that the one other fountain of immediate and important collection would be the sugar industry in Cuba. All being inspired with the convenience of utilizing and conciliating in the so doing through convenience to the Revolution, and having for the basis the assurance given by Mr. Delegate and the Secretary of War, and the Sub-Delegate that the Government of the Republic and the General in Chief would accept and respect the acts emanating from the action of the Committee and the Delegation, notwithstanding the existence of the recent decree of the Government of the Republic, prohibiting the next crop in all the Island, which disposition had been inspired according to the explanation of the Secretary of War in the necessity of not weakening, but on the contrary of sustaining and increasing the salutary effect obtained by the prohibition decreed and generally maintained in regard to the last crop, and with the understanding that the Delegation had succeeded by means of the sale of bonds in obtaining sufficient funds to provide for the necessary material for the army, but with the power of establishing exceptions in case that only by means of them that end could be obtained have agreed:

1st. That by the Delegation there shall be made public at once

in this city the aforesaid decree, prohibiting work on the coming crop.

2d. That notwithstanding its disposition concessions shall be made to some planters to grind in the said coming crop. The concessions to the least possible number of plantations, whose production united to that of the plantations, which it is estimated will be able to grind contrary to the decree, shall be less than the total of the past crop.

3d. That there shall be made a comprehensive statement of the plantations, in whose favor concessions to grind can be granted, which plantations are in the provinces of Oriente, Camaguey, and the most appropriate zones of Villas and Matanzas, and of their probable product.

4th. In the same manner there shall be made another statement of the plantations, which ground the past crop against the decision of the Republic, in regard to which there shall be recommended to the Government the convenience of imposing upon them a contribution of fifty cents for each bag of sugar that they shall have worked out.

5th. That the rate of the tax which will be imposed upon the planters to whom the right to grind shall be conceded, shall be fifty cents per sack, paid in advance, immediately, in American money, the proportionate part of which shall be decided upon by the Committee in each case, and making the payments of the rest in the form and installments which shall be agreed upon.

6th. That no concessions whatever shall be made to any planter for the next crop, who has pending the liquidation of his contribution for the former crop.

7th. That the Delegation will guarantee, in the name of the Government of the Republic, to the planters, who shall contribute, the respect by the Cuban forces for their property and the protection of the work of making the crop, and the preparations to grind.

8th. That the recommendation shall be made to the Government of the convenience of realizing (centralizing) in the Delegation the power to make concessions to grind and to collect taxes for this purpose, and not to recognize the validity of any concession of this nature, which does not emanate from the Government itself, or from the Delegation.

9th. That in regard to all of this reports shall be made to the Government for its sanction, and without its decided help the initiative and efforts of the Committee will be entirely useless.

It was likewise agreed that all the labors of this Committee and even its Constitution should be kept secret, while another thing agreed is that the concession should be made by the Plenipotentiary Delegate.

MEMORANDUM OF THE REUNION OF THE 20TH OF JULY.

1st. That the Senor Delegate in his correspondence should recommend and justify the convenience of centralizing the powers for making concessions of grinding, and for the collection of the contributions in tlris regard in the Delegation, indicating the abuses committed in Trinidad, Cienfuegos and Matanzas.

2nd. Explain in the same correspondence the convenience of making concessions to work to the mines of Santiago de Cuba, and the collecting of contributions from them.

3rd. Recommend to the Government the necessity of circulating amongst the Chiefs of Zones that they should prohibit and impede the carrying on of all work of cultivation in every plantation which had ground sugar in spite of the decrees of the Revolution, or which has pending the liquidation of any contribution for the past crop, so long as they do not pay to the Delegation fifty cents for each bag of sugar worked, reaching even the point of threatening destruction to their property if they don't settle up in a short space.

4th. Recommend likewise the necessity of having suspended and stopped all work of cultivation in all the plantations of Camaguey and Oriente whilst they are not authorized by the Government or by the Delegation.

5th. That without prejudice to the promises which may be contracted here, it is begged that the Government will communicate without delay by cable to the Delegation, and by means of an agreed phrase, its approval of the agreements of the Committee.

6th. To ask of the Government a memorandum of the plantations which have pending liquidation of their contributions for the last crop, and the amount of what is pending.

7th. To ask that it communicate opportunely the concessions which shall be made to grind or to cultivate.

8th. That while the agreed "census" is being formulated the Delegates shall receive the petitions which shall be made by planters, which should come accompanied by the situation of the plantation, its last production, and its probable calculated production; and the plantations which surround it, name and conditions of the owners, and their probable production.

LETTER OF TOMAS ESTRADA PALMA TO MAXIMO GOMEZ, JULY 22, 1896.

[Cuban Arms.]
Cuban Revolutionary Party.
Delegation.

NEW YORK, 22 July, 1896.

Major General Maximo Gomez,
Cuba.

MY DEAR FRIEND:

My last letters to you must have been surely lost, for in yours of more recent date you say you have not received them. I sent them via Habana in the supposition that you were going to that province. It is unfortunate that they have not reached you because the letters of those who love with loyalty and unselfishly are affectionate messengers whose intimate conversation does us much good amidst the painful tasks of political life. Miguel Betancourt will probably hand you this letter, or perhaps Rafael Cabrera, a worthy patriot, a leader in the former revolution. Either of these will talk to you about subject of which I have omitted to treat in this letter and will explain the subject treated in my communications to the Government, of which I enclose copy. Every kind of diligence is used here to supply you with arms and ammunition. From the 31st of June to the 6th of July 400,000 cartridges and 600 rifles have been landed, amongst them 400 Mausers, nearly 2,000 pounds of dynamite, wires, electric batteries, machetes, medicines, etc., etc. Three expeditions have sailed which landed respectively in Matanzas, Pina del Rio and Habana. The last one near Guanabacoa. But our earnest desires and diligence are dashed to pieces against the scarcity of funds which threatens. In virtue of this state of affairs we must solve the problem in this way: The campaign of the approaching dry season may be decisive in our favor if our army should find itself well provided with arms and ammunition. In this case, the enemies' army, so far from gaining the least advantage, would suffer considerable losses and then when the end of the campaign arrives with no favorable results for the Spanish arms, the Spaniards resident in Cuba and the Government of Madrid will have lost all hope of suffocating the revolution, the latter will have exhausted every resource to which it has turned, and will lack means to continue the war.

I do not wish to add here anything respecting the attitude which, with greater reason, the republican party, which will succeed the democratic party actually in power, might assume. It is, therefore, indispensable from every point of view to obtain money sufficient to land in Cuba before November 5,000 rifles and some millions of cartridges. My efforts to place our bonds and to contract loans in the United States, London and Paris have been fruitless; after many

promises unfulfilled and hopes vanished we have arrived at the conviction that we shall obtain nothing in this way; and as patriotic gifts are extremely deficient, there remains no way other than that of taxing the approaching sugar harvest. By the accompanying documents you will perceive that I have formed a committee with this object. Miguel Betancourt will tell you who form it. If you and the Government sanction the idea we shall have within a month at least $200,000, assuring thus the continuance of the campaign and of the economic disturbance in the island; no grinding, therefore, should be allowed except in those few sugar works that will advance a portion (50 cts. per bag) of the tax upon the crop, which amount should be paid directly to the Government, to you or to the Delegation abroad. I beg you, General, to take into consideration the difficulties which surround me with regard to the solution of the problem of pecuniary resources, which any other than the one I propose and which I am already carrying out in the hope that it will be approved. I have sent to you by another post a letter of Mariana. I had to make great efforts to persuade her [him] to accept the sum of $500 gold which I recommended Halton, our agent in Santo Domingo, to send her [him]. In order to succeed in this I had to bring to bear the affection of a friend. I have written to Panchito and Salas to come to New York to embark in an expedition. From that island it is difficult to do. I copy the letter from Habana which I have just received; and in which Weyler promises the Head of the Spanish Government as an undoubted result of the Winter Campaign the pacification of Pinar del Rio and dares to affirm that not one insurgent will remain in the whole of that part of Territory included from the East of the Trocha of Yucaro to Moron, which they are rebuilding. In the same letter I am told, "it is evident that the reinforcement announced will arrive, and it seems to me probable that the desire of Weyler is to finish off General Antonio Maceo; that most if not all of these reinforcements will fall upon Vuelta Abajo, and that there will be the field of battle in the Winter." I think the same, and for that reason am preparing an expedition of 1,000 rifles and 500,000 cartridges, which the worthy veteran Brigadier Juan Ruis Rivera will carry to General Maceo. The following expedition will be of equal importance, it will take cannons with projectiles of dynamite, if the trials which are being had result satisfactorily, or mountain guns of 12 pounds, which I have already contracted for and which will go wherever you direct. All our difficulties are caused by the vessels; this is what bothers me and prevents my sending immediately to General Maceo the expedition to which I refer. The "Commodore," which belongs to us, does not carry sufficient and is not fast enough. The Bermuda, in which we have some money, cannot be utilized owing to the want of a flag. The Minister of Great Britain has refused to allow her to go on using the English flag, and we are

begging in vain some of the South American republics to give us permission to use theirs; in order to obtain that of the United States it is necessary to have the sanction of Congress, which does not sit in session until December. The "3 Friends" has already made four voyages, and the proprietors refuse to charter her again. No one will charter us a vessel unless we deposit its value $40,000 or $50,000, which for the moment we cannot dispose of in this way. I am working, however, to secure the "3 Friends," even if I have to guarantee $25,000, and I believe I shall manage to use her again. I do not despair and have confidence I shall find a suitable vessel for the projected expedition. Miguel Betancourt will explain everything concerning the expedition which Láyete Bridal [Leyte Vidal] should have landed, and which went in the charge of Ruz. I have instituted an inquiry in both cases, which report I am not sending you as I have no time to make copies and require the originals. Here I must stop with the understanding that I shall write to you again if anything new should occur. I embrace you cordially and with the ever the same affection.

T. ESTRADA PALMA.

LETTER OF TOMAS ESTRADA PALMA TO SALVADOR CISNEROS, July 22, 1896.

[Cuban Arms.]
Cuban Revolutionary Party.
Delegation.

NEW YORK, JULY 22, 1896.

To the Citizen President of the Republic of Cuba,
Salvador Cisneros Betancourt.

MY DEAR MARQUIS:

I commenced in the month of May to write you an extensive letter with the object that you and the worthy members of the Council of the Government should be informed of the state of our matters in foreign countries, and of the labors of the Delegation. While I was writing this correspondence, which on account of its extent required a great deal of time, I saw that some important matters, which were being treated in it, were coming out in a manner contrary to my desires and hope, and I waited, therefore, the final development to continue my letter. Thus I have done and being finished it has been sent by another method. The economic question was principally the cause of the delay in finishing the said letter, in effect propositions had been made to me, which appeared of a serious and positive character in regard to the purchase of bonds up to the sum of two millions of dollars. Under the supposition that this negotiation would be realized, and that

another of equal importance would take place, I treated the question of sugar plantations from the point of view most consonant with my opinion, that is to say, from that of an absolute prohibition of the coming crop, reaching even the point of trying by a project of a decree to submit it for the approbation of the Government, of which I sent copy to General Gomez. Unfortunately the hopes which I had entertained over these negotiations were completely dissolved, and in exchange I have reached the conviction that it is little less than impossible to count on the sale of our bonds, or on a loan in any form to obtain the funds, which the necessities of the war demand, and which must be obtained at once. In the face of this fact, which left no room for doubt, I have seen myself obliged to assume a responsibility, and even to run a risk of incurring the disfavor of my Government, for which I invoke the indulgence of yourself, and of the Messrs. Secretaries, who, with you, compose the Executive Power. Fortunately the responsibility to which I allude is shared with me by General Roloff and the Special Delegate Doctor Castillo. These gentlemen, as well as I, are convinced that it is impossible to find money unless we appeal to some proprietors of sugar plantations under the promise that they may make their crop. These gentlemen support me in the plan adopted, and I am beginning to put it into execution. As appears in the act, of which I send herewith a second copy (I remitted the first with my former letter), the plan consists in agreeing with some proprietors of sugar plantations in the Oriente, Camaguey, one or more zones of Villas and Matanzas, which, in consideration of the payment in cash of a proportionate sum of the tax imposed upon the product of the crop, shall be allowed to grind this year. But taking in account all the extent in favor of the Revolution, of the economic disorder occasioned by the want of the crop, it will be arranged that the production of the grinding in the next season shall not exceed that of the past year. For this reason it will be necessary to limit the concessions to the number of plantations indispensible for the end which we propose to ourselves to obtain. The lack of order and of organization, which there was last year in the permits conceded, and in the contributions collected, not even receiving money of the contributions, and losing certain of the sums after they had been collected, suggested the necessity that this year the proceedings should be carried on with method. I advise the convenience in this particular of only allowing the Government, and General Gomez there, and the Delegates here, to give these permits to grind and to make the proper contracts. By this mode will be avoided those abuses, which it appears occurred in the zones of Villas, Matanzas and Havana, permitting plantations to grind without either the Government or the Delegation having received the slightest money coming from those plantations. In Cienfuegos they made 42,000 tons and in Trinidad 6,000, and it is not known that any im-

post or tax was received on that production. The same thing has happened in the plantations of Matanzas. On the other hand, I refused, in order not to contravene the decree of General Gomez and the disposition of the Government, to enter into agreements in the highest degree advantageous with some rich planters, who in view of my refusal have abstained absolutely from grinding. Very different from the conduct observed by some proprietors of Cienfuegos and Matanzas, who came on purpose never to make propositions to me in regard to grinding, and when I refused to treat with them, returned to Cuba and found some way of making a crop. In order to regulate in the proper way the plan of concession and collection of taxes it has been necessary for me to constitute an Auxilliary Committee of the Delegation with the name of Committee of Ways and Means (de Medios y Arbitrios). The three individuals which form it are a guarantee of impartiality and singleness of purpose by their fitness and by their honor. In addition to that, one of them being of great importance by reason of the social hierarchy which he represents. I have already celebrated several sessions with the Committee, and in that of last night a memorandum, of which I enclose copy, was agreed upon. Excepting Nestor Ponce, who is one of them, it is better for the best results of its labors that the names of the other members should be kept secret. The first step which we take in fullfillment of what is agreed is to publish in the newspaper "Patria" the decree of the Government prohibiting the next grinding. The command of this decree has to be generally obeyed and except only as to a certain determinate number of plantations, whose masters shall deliver in cash the sum which shall be fixed for them on account of the crop to collect the $200,000 and more, which we must soon have. The double result which we propose to obtain with this plan is on the one hand that the economic disorder of the Island should continue, preventing a large number of plantations from grinding, on the other, to obtain now, at this very moment, from the few excepted ones the money which we cannot get in any other way, and without which it is impossible to put in Cuba before November 4th, four or five thousand rifles, and several millions of cartridges, with some cannons of heavy calibre. It will be understood, however, how important are the following matters:

1st. That the fields and buildings of the plantations who obtain permission to make the crop should be conscientiously respected without putting any obstacles in the way of making their product.

2nd. That every possible means should be adopted to stop the grinding of the other plantations, burning up in all their extent the cane fields, and even destroying the buildings of those who try to grind by force.

3rd. That those plantations whose owners obey the decree shall be respected, giving them an absolnte guarantee of not causing them

damage in their fields or works. Proceeding thus we will avoid a ruin of the great part of the property, and we will at the same time attain the double end which we propose. That is to say reduce the crop to its smallest size and draw out of it the money which we want. It is prudent at this time to try to preserve intact the largest number of plantations, since without being an optimist nor making illusions for myself I understand that at any day there may come a crisis in the diplomatic relations of Spain and the United States, and that the intervention in respect to Cuba will take place on the part of this Government. But even leaving out this event it is to be hoped that the last effort which Spain can make will be that which she is preparing to make for the campaign of the next dry season, and it is very probable that even the Peninsulars, residents in the Island, as soon as this campaign has terminated without any result for the Spanish arms will come to be a decisive factor in the termination of the war on the basis of independence. With these well-founded hopes strengthened by the probability that the Republican Administration, which enters into power on the 4th of March of the coming year, will be resolutely favorable to us, the future of Cuba advises that there should cease, as far as possible, the destruction of those properties, which have to offer on the extent of peace work and welfare for those numerous masses which bravely and heroically fight for the independence of the country. It does not frighten me,—it is not the idea of reducing to cinders the whole Island from one end to the other, if that means is absolutely necessary to pull out Cuba once for all from the Spanish domination. Because our struggle is not only in behalf of an oppressed people, but also it is the noble impulse of men vexed in their honor, who have in their conscience the duty which is imposed upon them by their wounded dignity. But before the gigantic proportions which the freeing revolution has at this day reached, which drags in its course with insuperable strength all Cubans and many Spaniards, there is already time to think of the country, and if it is not necessary to destroy in order to conquer, because we have throughout the victory by other means, let us adopt anew, supposing that we have demonstrated to the world that it is the Government of the Republic of Cuba and not the Spanish Monarchy, which dominates in Cuba. Let us adopt, I repeat, the policy of protection established at the beginning of the war. That the destruction of plantations should be at the mercy of caprice, and perhaps of personal vengeance, should be stopped. These things are always odious and serve only for the discredit of our holy cause—these partial acts performed without reason. The power of destroying one plantation or another ought to be limited to the General-in-Chief, and by delegation to the chiefs of Departments, under his most strict responsibility. A power which he should not exercise unless as a punishment, in which case for proved disobedience of the laws and disposition of the Republic. Public acts ought to be the work of a rational system, and not the

result of caprice and individual impulse, and it is already time that in the territory dominated by the Revolution there should be established from East to West, and carried into effect, a regular system in matters of vital importance, as is indeed the destruction of property and the collection of taxes. Permit me to make these indications, which are born of my fervent patriotism, and as to which I confide in the intelligence and goodness of the worthy representatives of the Civil and Maritime Government of our beloved country. I earnestly desire the health and felicity of those who, day by day, give to the world the most noble example of heroism and self-denial upon the altars of the independence of Cuba.

T. ESTRADA PALMA.

MEMORANDUM OF THE REUNION OF THE 28TH OF JULY, 1896.

The peremptory necessity which there is of funds in order to realize certain plans already on foot to send a respectable quantity of arms and munitions to Cuba in the shortest possible delay being made manifest, it is agreed:

1st. That the Delegates shall write anew to the Government insisting on the urgent necessity which exists of communicating without loss of time to the planters that have ground contrary to the orders of the Revolution, and particularly to those of Cienfuegos and Trinidad, in order that they should subscribe in a short space to the Delegation fifty cents for each bag of sugar, which they shall have manufactured.

2nd. That having published already in the newspaper "Patria" the decree of the President of the Republic prohibiting the next grinding, efforts shall be made at once with the planters in whose favor it may be decided to grant concessions to the end that they shall agree upon the quantities, which they have to pay in cash.

3rd. That there shall be fixed as the nucleus of zones, in which concessions may be made to grind in the next crop, the following in Oriente, and Camaguey. Those which comprise the plantations which were worked in the past crop. In Las Villas the plantations whose names will be given verbally by a person worthy of confidence. The same as to those of Matanzas, without prejudice to making other concessions if the necessities of the Revolution require it.

4th. That the Delegates shall send powers to Doctor Betances of Paris, in order that within the month of August he can agree upon a guarantee in the name of the General Government for the next grinding by means of the concessions which the Committee has granted and the payments in cash of the quantities which shall be named.

5th. Urging the counteracting of the effect which may be caused

by the news which appears to circulate in respectable elements of this city according to which the Government is disposed to make concessions for grinding to the planters, who shall come to an understanding with the Delegates of the Treasury, and the Military Chiefs in Cuba, the immediate result of which will be that the planters to whom the Delegation shall address itself will show themselves indifferent to either indication, or will refuse to give them the resources of which they have such peremptory need. That the Delegates shall insist with the Government upon the necessity of centralizing in the Delegation the power to make concessions to grind in the cases in which the Government itself shall not proceed, and to collect the contributions which have to be paid for said concessions, and that they should threaten the planters who have ground in Oriente and Camaguey to the end that they should within a brief space hasten to come to an understanding with the Delegation in regard to the next crop.

List of Sugar Plantations in Cienfuegos and Trinidad with Amount of their Yield.

[Cuban Arms]
Cuban Revolutionary Party
Delegation.

New York, ———, 189—.

Plantations which have ground in the jurisdictions of Cienfuegos and Trinidad, and the crop which they have made:

	Sacks.
Cienfuegos:	
Constancia, belonging to Apezteguia	80,000
Hormiguero, belonging to ———	43,000
Manuelita, belonging to Reguera	35,000
Dos Hermanos, belonging to Acea	30,000
Soledad, belonging to Atkins	17,000
Parque Alto, belonging to Fowler	15,000
Dos Hermanos, belonging to Fowler	15,000
Portugalete, belonging to Escarza	14,000
Andreita, belonging to Montalvo	13,000
S. Agustin, belonging to Castano	13,000
Sta Maria, belonging to Cacicedo	10,000
Carolina, belonging to Stewart	10,000
Regla, belonging to Castano	6,000
Caridad, belonging to Capote	4,000
S. Luis, belonging to Montalvo	2,000
	294,000
Trinidad:	
Central Trinidad, belonging to Stillmann	32,000
belonging to Schmidt	8,000
	334,000

LETTER OF TOMAS ESTRADA PALMA TO MAXIMO GOMEZ, JULY 29, 1896.

[Cuban Arms]
Cuban Revolutionary Party
Delegation.

NEW YORK, 29 July, 1896.

Major General Maximo Gomez,
Cuba.

MY DEAR GENERAL AND ESTEEMED FRIEND:

The original of the copy which I enclose is in the possession of Miguel Betancourt, who should have arrived there by this time, but who is detained owing to the vessel which was to have taken him, and which is freighted and ready, being watched by two American gun boats. It is of urgent importance that those communications should reach you and the Government, and I shall avail myself of every means by which this may be done. Although I explain in detail the only possible solution to the problem of how to acquire promptly the indispensable funds for sending you in these two months of August and September a good number of arms and a large park of artillery. I must condense my remarks in this letter to the most important features of the plan which has been adopted, and to that part of it which refers to the help which you and the Government must lend me in order that we may obtain a positive and prompt result. In order to reconcile the effects of the economic disturbance produced by the interruption of the sugar grinding with the pecuniary aid in ready money which we shall obtain from those sugar works which may be allowed to complete the harvest, the committee appointed by me to aid me in this affair, of vital importance, has designated the sugar works of the East of Camaguey and certain ones of Cienfuegos, one of Remedios and others of Matanzas, as the only ones with whose proprietors contracts shall be concluded. These contracts will be based upon a duty of 50 cents per bag and the immediate payments in some cases of a half, in others of a third of the whole amount due upon the produce of the crop. If the money be not advanced no grinding shall be allowed, for it is not a question of gradual payment in proportion to the grinding done, which would be of little use to us on account of the delay, but of the absolutely indispensable payment to us of their portion of the two hundred thousand required during these two months with which to provide the army of freedom with the elements of war necessary to carry on the campaign during the dry season, a campaign which may be decisive in our favor. With the exception of the sugar works of the east of "Camaguey" and of those of "las Villas" and "Matanzas" which may be indicated, no permission of any kind to complete the

harvest should be given to the rest of the sugar works and every possible means should be employed to make the prohibition effective. Those proprietors who ground last year without paying any contribution to the Government of the Republic will be taxed upon the total amount produced at the rate of 50 cents per bag. In the case of refusal to pay they will be punished as may seem fit. In the sugar works where permission to grind has been granted no preparatory work may be commenced, and if already begun must be suspended until they shall have paid this delegation the amount which corresponds as payment in advance on the sum total due by them. If I advise that the contracts be made here it is simply because the Committee in whose charge the affair is, and which is composed of very rich and honorable people of great prestige has full knowledge of the usual production of each of these properties and because by this means prompt payment of ready money is facilitated. In any case it is most important whether the contracts are made here or there, that those sugar works which are going to grind should not commence work until they have paid the amount assigned to them as payment in advance on account of the total contribution. My only object in making these suggestions and those which follow, is to obtain a positive result from the proposed plan, so that the Delegation abroad may at once collect sufficient funds to buy and remit at least 3,000 rifles and some million cartridges together with the six cannons 4 of 12 pounds, and 2 with explosive projectiles already contracted for. The experience acquired during the past year should serve us as a warning to-day to organize in proper form the contributions on the sugar crop and to avoid—1st. That sugar works which have no right to grind should do so owing to tolerance on the part of the local chiefs as happened in Cienfuegos, Trinidad and Matanzas. 2nd. To avoid the nonpayment of the contributions imposed upon those with permission to grind or the disappearance of the money when paid. Take as an example the sugar works of Manzanillo, from which only $15,000 was received; of Bealtie $10,000; of Mr. Ridny and some 11,000 more or less from a sugar work of Ramierez Oso. I was told by the Cuban Secretary of the Treasury that a proprietor of Manzanillo would deliver over to me $50,000, but up to the present the money has not arrived, neither do I know who the person is who should deliver the amount. Another good example is offered by the sugar works Santa Maria de Guantanamo, belonging to Mr. Fernando Pous. Major General Antonio Maceo had sent checks drawn on that person for $400,000; he not only refused to pay them but also endeavored to entrap our agent in Paris, Dr. Betances, and summon him before the courts as guilty of attempting to obtain money by threats. Senor Pous paid frs. 10,000 less than $2,000 to General Calixto Garcia, and also, so he says, $1,500 to the Sub Delegate at Guantanamo, and he asserts that

he paid through his manager a month ago to the same Sub Delegate bills in triplicate for $7,500, which were to be received by this Delegation in New York. I have not, however, received them yet, and in an interview which I had with Mr. Fernando Pous he made contradictory statements in his eagerness to secure from me permission to grind, and that the $7,500 should be considered as payment on account of the next crop. Needless to say I refused him permission to grind and was careful to assure him that I would never admit that money as on account of the next crop, if he should be allowed to grind, but only as payment on the former one. I ought also to mention that in a recent letter José M. Botamos, Sub Delegate of the Treasury in the Province of Havana, speaks of a sum of $10,000 which he was forwarding by the bearer of the letter, for the purpose of enabling Commandant Castroverde, General Aguirres' chief of staff, to conduct another expedition in addition to the one landed by Dr. Castillo on the 6th of July near Guanabacoa. The money has not arrived, but one perceives that such a sum did exist in power of the Sub Delegate referred to, all these sums of money, the $50,000 from Manzanillo, the $7,500 from Guantanamo, the $10,000 from Havana, are urgently required, as is also the sum of $18,000 which Mr. B. assures me the President Cisneros wished to deliver over to him that he might bring it to the Delegation, and which he was unable to do, on account of the danger of being denounced to the Spanish authorities, contenting himself with bringing me only 3,000 odd dollars, which he offered to deliver over to me to-day. In the precarious situation in which I find myself, unable to dispose of the funds which are indispensable to meet peremptory necessities of the war, I assume the entire responsibility, and am commencing to make contracts regarding the permission to grind, and to this effect I am sending powers and instructions to Paris on Saturday, 1st August. From them I must obtain at least $50,000 ready money which is required to liquidate the obligation for $75,000 contracted with the house which supplies us with arms and ammunition. We are also negotiating for a vessel faster than any Spanish one, for I dare not run the risk any longer of employing slow vessels. You see how anxious I am to fittingly correspond to the confidence you place in me. You ought to be already aware that in the space of 15 days three expeditions landed with complete success in Matanzas, Pinar del Rio and Havana 900,000 cartridges, 700 rifles, of which 400 Mauser, on the 6th, 21st and 22d July. I do not rest, in my anxiety, to arrange that you may receive before October the armament which I propose sending you. But it is necessary also that the Government and you back me up by convincing in every possible way the proprietors or managers of the sugar works of the East, Camaquez, Las Villas and Matanzas, that they shall not grind at all without paying here in the Delegation the advance corresponding to the

contribution upon their crops. It is necessary to send precise instructions in this sense to the Chiefs of Departments, to be communicated by them to their subordinates in the various Districts. It is very important, General, that the revolution should make its power felt; that the proprietors should know that the grinding of the sugar without the permission of the Government is an impossibility; and to prove the truth of this nothing was seen to be so efficacious as to make a well merited example of the sugar works of Apezteguia and Romero Robledo, who are our most deadly enemies, and who last year threw down the gauntlet to us, upon the word of a Spaniard, completing their harvests with impunity. At present there are several proprietors of sugar works in New York, and I am assured by a person of confidence that some of them assert that they have already received permission to grind from General Garcia in the East from the Marquis in "Camaguey" and from some leader in "Matanzas" and "las Villas." I have replied to this that it may well be so, but that they must understand that unless they pay in ready money during the first fortnight in August the half of the tax, their permits will be withdrawn from them by the same authorities who conceded them. I have dwelt too long upon this subject and it is time I passed to something else. I copy the following paragraphs from the Havana letter: I have no doubt that, in effect, General Maceo will be the objective point of the dry season campaign, and so I have written to the General to whom I have also transcribed the following paragraphs: Either in that letter or another, I have already intimated that I am making efforts in order that he may promptly dispose of new elements of war. I received a letter from Mariana a few days ago and have sent you by former posts other letters of hers. I think I have already told you that after persisting in her refusal she finally yielded to my entreaties, accepting the $500,000 which I had recommended Halton, our agent in Santo Domingo to deliver to her. I have sent for Panchilo and Galas in order that they may leave here to join you. I am told, General, that you expose yourself frequently to danger when it is not necessary to do so. If the consciousness of your own preservation does not suffice to make you prudent, learn that the interest of the country, which is being formed at the cost of such cruel sacrifices, imposes upon the inevitable duty of occupying during fights the post of Commander-in-Chief—not that of the bold and dashing soldier so numerous in our army. Remember, my dear friend, that there are arms in plenty to execute, but that it is not easy to replace heads that direct, especially when they carry the general plan of the campaign. Excuse this hint which is born of my affection for you and of my profound interest in the holy and avenging revolution. Your old friend and companion embraces you in the spirit.

T. ESTRADA PALMA.

COMMISSION OF JUAN RIUS RIVERA, ISSUED BY T. ESTRADA PALMA.

(For *fac simile* see Frontispiece to this Report.)

NEW YORK, 10th of August, 1896.

Brigadier Juan Rius Rivera.

DISTINGUISHED FELLOW CITIZEN:

This Delegation, confiding in your fitness, patriotism and experience, has deemed it expedient to entrust you with the command of the expedition, which ought to disembark in the Vuelta Abajo, and which at the time of the disembarkation Colonel Emilio Nunez should deliver to you. It is pleasant for me to have this new occasion to reiterate to you the testimony of my true appreciation.

T. ESTRADA PALMA.

LETTER OF TOMAS ESTRADA PALMA TO MAXIMO GOMEZ, AUGUST 25, 1896.

NEW YORK 25th of August, 1896.

Major General Maximo Gomez, Cuba.

MY DEAR FRIEND, VERY DEAR AND ESTEEMED:

It is great the pain I feel in seeing by yours of the 3rd of the current month and by the other letter before that you do not receive my letters. I have directed them via Havana and via Camaguey. I did not write to you with Calixto nor with Portuondo because I had understood then that you were in Las Villas from whence you wrote me the middle of April. Also I delivered to Miguelito Betancourt a large correspondence, as well as for yourself as for the government trusting that he would come up with you. Unfortunately the American Government has begun again the old persecution against every suspected boat, or even an attempt to conduct an expedition, and when Miguelito Betancourt was on the point of going out, the boat which was to carry him was detained. I tried to send him in another boat, and this was also detained by the American authorities. On the other hand two expeditions were able to get off which had been prepared at the same time with that of Miguelito, of which one at least should be already in your hands. It went under the command of that equal patriot Rafael Cabrera, a man of much merit, by his superiority and by his judgment, a lawyer of Cienfuegos where he exercises an extraordinary influence. By the copy of the enclosed letter you will see the imperious necessity which I have that you and the government should approve of the plan that I propose to you to get money with which to give you aid. If it merits your approbation it is highly important that you should communicate it to me without loss of time in order to close contracts which I have prepared, and to receive in cash the sum corresponding to half of

the taxes. It will not be difficult to send a telegram to the merchant of this city, by means of the proprietary of Camaguey; telegram should say "sugar permit;" this should signify that you are agreed with my idea.

In possession of Miguelito Betancourt who has some advices there are letters of Mañana for you; another has been sent by a different conduct, and I have sent his letters to ————; those which from you have come for her. Pandireto and Salas ought to go with Miguelito and are with him awaiting the opportunity. I wish you to know once and for all that if you do not receive my letters it is not because I fail to write them but because they get lost, and that it is entirely impossible that the affection and esteem which I have from all times professed for you should weaken when on the contrary it grows stronger with time. I embrace you with my heart.

T. ESTRADA PALMA.

27th P. S. Enclosed is a letter of Mañana. I have just received a cable advising me of the arrival of two expeditions of the three into which it had to divide itself—the shipment which went out distributed in two steamers. The third ought to have disembarked last night. I prepare another which I have engaged in twenty thousand. Help me to get out of my troubles and to provide funds for the treasury which is to-day exhausted.

T. ESTRADA PALMA.

LETTER OF TOMAS ESTRADA PALMA TO RAFAEL M. PORTUONDO, AUGUST 26, 1896.

NEW YORK, August 26, 1896.

Citizen Secretary of Foreign Affairs.

CITIZEN SECRETARY:

I have the honor to acknowledge the communications of your Department, dated July 9th, 13th and 17th, and the Acts which were enclosed. Lieut. Col. Enrique Cespedes, Lieut. Emanuel Gutierrez, and citizens Mario Carrillo, Laborde, Mr. Flent, Doctor Stevens, and Pilots are in New York since the beginning of this month. The operation on the leg of citizen Cespedes, which he needed, has been performed. The operation was performed by Doctor Menocal, assisted by other Doctors, principally by Doctor Portuondo. He was installed for his better care in the Hospital of that beneficent Cuban Institution, the Marti Charity Association, at the head of which is found the ardent patriot, citizen Emilio Agramonte. There he is attended with particular care and competely gratis, in such a manner that Colonel Cespedes can apply at his pleasure the $15.00, which the Delegation gives him every week. In spite of what the Department of State advises me

in its note of July past that Laborde and Doctor Stevens, as well as Carrillo and Flint will defray their expenses while abroad, I have been obliged to assign to the first $7.00 per week for the term of five or six weeks, which he requires to cure himself of the illness which he says obliged him to leave Cuba. And I have been obliged in order to avoid trouble and discredit to pay to Doctor Stevens his expenses in Nassau and his passage from there here, and the round trip to his house in New Hampshire, New England, and other costs all coming up to nearly $100.00. Mr. Stevens had understood that the Delegation would have to support him here by virtue of the Commission which he has. It has caused me trouble to convince him, and at the end as a compromise to prevent scandal I have paid the above charges, future charges to be absolutely his own. It will be the object of another communication—the matter which has served as a motive to Mr. Flint and Doctor Stevens to come to New York. At the present moment there have come together abroad coming from the fields of Cuba the following Commissions: Major General Carlos Roloff and ten more individuals; Lieut. Col. Enrique Cespedes and two others; Lieut. Rafael Gutierrez, sent by Colonel Peña with the Pilots; Aurelio Roca y Mora, and the Americans George Reus, Terrel, Roemer, Balrgass and Fosberg; Carlos M. Aguirre, who considers himself a Colonel by the nomination which he has from General J. M. Aguirre, and Salvador de Castroverde, Commandant, both sent by the General last mentioned. Commandants Ricardo del Gardo and————Alberto; F. de Valasco, Captain on a Commission, the two first from General Antonio Maceo, and the third from Colonel Baldemero Acosta; Daniel Broche, Pilot on a Commission of General Carrillo. The Delegation has found itself obliged to sustain the greater part of these individuals, and gives them weekly: to Lieut. C. Enrique Cespedes $15.00; Citizen R. Perez Morales $15.00; Commandant Ricardo Delgardo $10.00; Captain A. P. de Velasco $10.00; Captain Prado $10.00; E. Laborde $7.00; Daniel Broche $7.00; Severiano Gavez $6.00; Lieut. Gutierrez and Pilot Roca y Mora $7.00 each. Six of those who accompanied General Roloff have remained in Jamaica and they are supported there. Some of the pilots who came with Colonel Cespedes and others sent by General Garcia have gone out with the expeditions, which at this date ought to be safe on shore. The group of Americans: Rino, Roemer, etc., Lieut. Guiterrez cost as follows: $160.00 for passage to New York from Nassau, in addition to $50.00 expenses in Nassau; $53.00 to Roemer and Haligas to go to St. Louis, their native city, and some $10.00 for passage of other American, courses of dinner, etc. The resources of the Delegation are exhausted. The effort lately made to send in three expeditions simultaneously, 4,900 rifles and 1,350,000 cartridges, 3 cannons and dynamite, etc.; the cargo which we are preparing for a new sending, and that which is

on board the "Commodore," which for the present it is convenient should remain where it is, cost more or less $150,000. The personal credit of the Delegation being pledged for $200,000, which I am trying to collect at all hazards, in order to preserve our prestige, and the confidence which we inspired in Europe. But this desperate situation on account of the want of funds and the impossibility of obtaining them in any other way, unless by means of a tax upon the coming crop, so long as the owners of plantations who are permitted to grind shall deliver to us in cash, now the half of the sum B of the whole amount of the tax at the rate of fifty cents per bag, the impossibility, I repeat, of getting money in any other way has compelled me to beg the Government to approve the plan which I propose, reduced to permitting grinding by the plantations of Oriente and Camaguey, and some in Las Villas and Matanzas, in accordance with the suggestion the committee, which has been organized to enlighten me in the matter, and in order that it may aid me in the formation of a *census* in regard to the product of the crop of the aforesaid plantations, as well as in other important particulars of the matter. Many proprietors of the said places are ready to deliver to me the sum in cash which corresponds to them, and I can collect quickly $100,000, which would give a great impulse to the labors already organized of the Delegation to realize new and successive shipments. Otherwise my desperation would be horrible, in view of my absolute impotence to secure it for our brothers in arms, precisely when this aid has to give in the campaign of the dry season a final blow to the Spanish domination. I dare to recommend to the Citizen Secretary that he should receive favorably my idea and aid it before the Council of the Government, and if it merits the sanction of the Executive, that he would transmit me by cable the approbation through the conduct of the merchant in New York. The citizen President knows that this can be done by means of the same individual to whom the Citizen Secretary of the Treasury lately delivered the $3,826.29 in gold, which I received two or three days ago.

"Sugar Firm" would be sufficient, and I could immediately telegraph to Paris to make effective and binding contracts there, closing those which I have begun here. Apropos of the narrow state of the Treasury, I permit myself to beg the Council of the Government to order that Mr. B. shall deliver to us the $5,000.00 which he retains for instructions of that illustrious body, for an object which has no probability of being fulfilled there now or later. Seeing that the country is in such great need of that money, which never would be so beneficent as in the actual circumstances, I called the attention of the Citizen Secretary to the fact that I have not yet received the $100,000 in gold which the Delegate of the Treasury of Havana, Citizen Jose M. Botanos, told me in his

note of July 20 that he had delivered to the person, whose name he did not give, and who should be the bearer of said letter.

This came here from Havana by the ordinary way employed for correspondence between the Capital and ourselves. I have written to citizen Botanos and to General Aguirre, but up to this date I have not had a reply, nor have I received the money. The want of time, because it is near the hour of sending off this correspondence, forbids me to treat of other matters, with which I will occupy myself in the next communication. I am, with great respect and consideration,

T. ESTRADA PALMA.

LETTERS OF TOMAS ESTRADA PALMA TO RAFAEL M. PORTUONDO, AUGUST 27, 1896.

NEW YORK, 27th of August, 1896.

Colonel Rafael M. Portuondo,
Secretary of Foreign Affairs, Cuba.

MY DEAR RAFAELITO:

Two or three days ago I wrote to you by conduct direct to Camaguey. To-day I send you an extensive official communication, the contents of which I recommend to you as well as the two copies of the notes formerly addressed to the Marques. I know positively by a cable which I have just received that there have arrived happily in Cuba two of three expeditions which went out at once. The other ought to have disembarked last night. God grant that they have no accident. In all, this valuable shipment, which sums 4,900 rifles, 1,300,000 cartridges, three cannons of twelve each artillery, dynamite, four hundred machetes, medicines, etc. The citizen Rafael Cabrera, deserves encomiums and the most distinguished consideration for his patriotism, his superiority and his valor. This man is of the order of great influence in Cienfuegos. Be kind enough to recommend him in my name to the government and the General in Chief. He will have delivered to you a valuable expedition. I accompany a letter of Ritica. I see frequently Uldaldo, Tomaya and Juan Miguel. The accumulations of daily occupations deprive me of the pleasure of seeing Ritica and Rafealito. From time to time I get news of Mañana and of the children. I end with a close and cordial pressure of the hand.

T. ESTRADA PALMA.

LETTER OF TOMAS ESTRADA PALMA TO RAFAEL M. PORTUONDO, SEPTEMBER 10, 1896.

[Cuban Arms.]
Cuban Revolutionary Party.
Delegation.

NEW YORK, 10 September, 1896.

Secretary of Foreign Affairs,
Cuba.

DISTINGUISHED COMPATRIOT:

I have the pleasure to enclose copy of the communication from Cayo Hueso sent me by Col. Emilio Nunez, on his return from the coast of Cuba, where he had landed in safety three large expeditions carrying in all 3,900 rifles, 1,250,000, cartridges, 3 cannons 12 pounders with park of artillery, 600 machetes, 1,000 lbs. dynamite, wire and electric batteries, medicines, etc., etc. The perusal of said letter will inform you of the details of this operation which has been crowned with so happy a result. For further elucidation I will give you the following explanations: Comprehending the urgency of utilizing the month of August for placing in Cuba the largest possible quantity of munitions and rifles compatible with the funds in the Treasury, I formed the plan which turned out so well in conjunction and with the aid, experience and counsel of the Sub-Delegate Dr. Joaquin Castillo and Col. Emilio Nunez, Chief of expeditions as also of our consulting advocate Horace S. Rubens; and this happy result took place in spite of the partial interruption of the operations caused by the arbitrary measures adopted by the Government of Washington. The plan consisted in sending aboard a steamer chartered for the purpose two-third parts of the cargo, one-third part aboard another steamer together with a certain number of men, and the bulk of the expeditionary force abroad a third steamer. This last steamer and the second after having duly unloaded were to meet the first each taking its corresponding cargo from her, one to land her portion in Pinar del Rio and the other in the East; the first landing having been made in Camaguey. Our first thought was that Brigadier Rius Rivera named to lead the expedition of Pinar del Rio, should go in the vessel which carried only the arms and ammunition, but subsequently on the eve of putting the plan into execution, it was deemed convenient that Brigadier Rius Rivera and Brigadier Miguel Betancourt should proceed in the vessel which carried only the members of the expedition, and as it was necessary for a substitute to go in the vessel carrying the arms and ammunition I telegraphed to General Roloff, at that moment in Tampa, begging him to start at once for New York. He arrived on Saturday at 2 p. m., the day precisely on which the above mentioned vessel was to start; I explained our plan to him

and he agreed, offering at once to embark in the vessel which carried the arms and ammunition. This he did the same night, the vessel getting away with complete success. On the 13th inst. Col. Emilio Nunez also sailed aboard the ste amer carrying the third part of the cargo, taking with him the worthy patriot Rafael Cabrera and 35 more men. On the 15th should have sailed the steamer aboard of which were to go Rius Rivera and B etancourt, and the corresponding number of men necessary for the unloading of the other two vessels, but shortly before the hour settled for the start she was detained by order of the authorities at Washington and placed under the guard of a man of war. It should be stated here that the steamer to which I allude at the time of her detention had aboard neither members of the expedition nor anything proving a violation of the Neutrality laws of the country; the proceding was arbitrary in the extreme, as is proved by the fact of her being let free five days afterwards, owing to the Government having found no proof which would justify her detention. Even under these circumstances the proprietor of the vessel was obliged to give his word of honor to the commander of the American gunboat that his vessel should not sail with a filibustering expedition aboard. In consequence of this, the combination of which this vessel formed part, was destroyed. I leave to the consideration of the Cuban Secretary and the rest of the members of the Government the ills which afflicted my soul in the face of this contrariety which it was impossible to remedy, as another vessel for the service could not be found. I foresaw the embarrassing situation in which Col. Nunez would find himself, unable to count upon more than 18 men to carry to and unload on the coast of Cuba the big cargo which was waiting for them at a determined spot, aboard the other vessel. My only hope was in that once upon the ground Col. Nunez with the aid of General Roloff would save the situation. And so it happened. Nunez took half the cargo with the few men at his disposal, and unloaded it on the coast where fortunately he found men on the lookout, who immediately sent word to General H——— Vasquez. Col. Nunez returned for the rest of the cargo and accompanied by General Roloff carried it to the same spot where they found hundreds of our soldiers ready to protect with their lives if necessary, the valuable aid which the army of freedom was receiving. In order to send this cargo I was forced to pledge the personal credit of the Delegation in $29,000, for the total expenses of arms and ammunitions, etc., etc., freighting of vessels, steam tugs and launches, cost of boats, transport by railway of part of the cargo, fares of the men, presents to captain and crew, etc., etc., passed $110,000, and in the treasury we had a little less than this sum. I found it necessary to arrange with the company which sells us the elements of war to accept payment half in ready money and the rest in ten

terms. Some weeks previously I had sent Benjamin Guerra, the Cuban Treasurer, and the Secretary of the Delegation, Gonzalo de Quesada, to visit Tampa, Key West, and some other cities in Florida with the object of exciting the patriotic spirit of the noble workmen in that part of the country and obtaining as an extraordinary contribution some thousands of dollars in the least possible time. The mission of Guerra and Quesada produced relatively a great result considering the modest resources of the Cubans of Florida. I counted, therefore, to pay this debt of $29,000 upon the receipts proceeding from this extraordinary contribution, certain voluntary contributions of generous patriots, and upon the amount I was hoping to receive from the taxes which were being paid. I was not mistaken. I have already paid $15,000 of the debt. I have had sufficient money to send to Pinar del Rio an expedition equal to that one which should have gone in August, and to prepare another which Brigadier Miguel Betancourt will lead. It is true that there yet remains $14,000 to pay, but I have a term of one month to do this and trust to be able to discharge the obligation satisfactorily. I must mention, however, that already the voluntary contributions are becoming scarce and that my efforts to induce rich Cubans to take up bonds to the value of $60,000 or $80,000, have failed to move the hearts of these men who possess, indeed, many thousands of dollars which they do not require and who yet refuse at this moment to aid the army of redemption which is to afford them dignity and a free country. Excuse this digression and permit me to return once more to the subject of the expeditions. The preparations for the expedition which has just been sent to Pinar del Rio were commenced as soon as I lost the hope that Brigadier Rius Rivera could sail in the vessel which we had started and which was detained by the American Government. Upon the second of this month all was prepared, and in the night of the same day the expedition left, led by the Sub Delegate, Dr. Castillo, and with Briga dier Rius Rivera as commander upon landing in Cuba. General Maceo is therefore in actual possession of 1,000 rifles more or less, 400,000 cartridges, a cannon which discharges a shell loaded with melanite, machetes, etc., etc. This is the second expedition landed in Vuelta Abajo, without counting what could be saved from the expedition led by Laborde and Monzon in the Competitor. In former communications to the Council of Government, I made mention of the merits contracted by Col. Nunez in military service of the greatest importance. In connection with this I allow myself to recommend his promotion to Brigadier. I then made this same recommendation to the commander in chief of our army. And I do so now with the greater reason after the brilliant success obtained in the landing of the Cabrera expedition and of the two others in the East, and I take again the liberty of

recommending to the consideration of the Government and the Commander in Chief, the justice in my humble opinion of conceding to Col. Nunez the next immediate grade of Brigadier. There is no better way of rewarding the services which this worthy patriot gives in the conduct of expeditions than by military promotion, and it is all the juster to do so in that Col. Nunez would prefer to be in the field by the side of those who fight with arms in their hands and only remains here in obedience to the orders of the Delegation, who require men of his special aptitudes and conditions to help them to organize expeditions and lead them to their destinations. I must also seize this occasion to make present to the Government that the co-operation of Dr. Castillo could not be more efficacious either in the work of the Delegation or in the services which lends in sharing with Col. Nunez the glory and danger of conducting personally expeditions to the coast of Cuba. I will treat of other particulars in a separate communication which will go by another post, if there should not be time for it to go in this one. I have the honor, Cuban Secretary, to offer you the assurance of my highest consideration and respect.

T. ESTRADA PALMA.

REPORT

TO

Don E. Pupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX I.

PART II.

NEUTRALITY LAWS OF THE UNITED STATES AS TO VESSELS FITTED OUT OR ARMED TO COMMIT HOSTILITIES.

"SECTION 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, for the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States."

NEUTRALITY LAWS OF THE UNITED STATES AS TO VESSELS FITTED OUT OR ARMED TO COMMIT HOSTILITIES.

INTRODUCTION.

Under Section 5283, R. S. U. S., any vessel of any kind or description which is, in the United States, furnished, fitted out or armed, with intent that such vessel shall be employed in the service of the Cuban insurgents to commit hostilities no matter what the character of the hostilities, against the subjects or property of the King of Spain, is liable to forfeiture by civil proceedings in admiralty and all arms, ammunition and stores which may be procured for the equipment of such vessel are, in like manner, and by like proceedings, subject to forfeiture.

The laws of the United States, Revised Statutes, Sections 5283, forbid *the fitting out and arming, the ateempt to fit out and arm, the procuring to be fitted out and armed, or the knowingly being concerned in the furnishing, fitting out* OR *arming,* within the limits of the United States, of ANY VESSEL—without any description, limitation or restriction whatsoever as to the KIND OF VESSEL—with the nitent that such vessel shall be employed in the service of any colony, district or people to commit HOSTILITIES—without description, limitation or restriction as to the KIND OR CHARACTER OF THE HOSTILITIES—against the subjects or property of any foreign prince with whom the United States are at peace.

Persons offending against the statute are subject to criminal prosecution, and the punishment provided is a fine of not more than ten thousand dollars and imprisonment not more than three years.

By the same law it is further provided that not only the vessel itself but all arms, ammunitions and stores which may have been procured for the equipment thereof, shall be subject to forfeiture, the

proceeding to enforce which is a civil proceeding in admiralty against the offending things.

The "Three Friends" case.

The proceedings against persons and those against vessels under this statute are wholly distinct and in no wise dependent upon each other.

The Supreme Court of the United States in the case of the "Three Friends," decided at October Term, 1896, in the opinion which appears in the following pages 1 to 18, has authoritatively fixed the construction of Section 5283 in this respect.

The Court says:

> "We agree with the District Judge that THE CONTENTION THAT FORFEITURE UNDER SECTION 5283 DEPENDS UPON THE CONVICTION OF A PERSON OR PERSONS FOR DOING THE ACTS DENOUNCED IS UNTENABLE. THE SUIT IS A CIVIL SUIT IN REM FOR THE CONDEMNATION OF THE VESSEL ONLY, AND IS NOT A CRIMINAL PROSECUTION. THE TWO PROCEEDINGS ARE WHOLLY INDEPENDENT AND PURSUED IN DIFFERENT COURTS, AND THE RESULT IN EACH MIGHT BE DIFFERENT. Indeed, forfeiture might be decreed if the proof showed the prohibited acts were committed, though lacking as to the identity of the particular person by whom they were committed. The "Palmyra," 12 Wheat. 1; The "Ambrose Light," 25 Fed. Rep. 408; The "Meteor," 17 Fed. Cas. 178."

Another important point decided by the Supreme Court in the case of the "Three Friends" was THAT THE VESSEL SHOULD NOT HAVE BEEN RELEASED *on stipulation pending proceedings for forfeiture* as it was, and should be recalled on the ground that the order of release was improvidently made. And in reversing the decree of the District Court of the United States for the Southern District of Florida, directions were given by the Supreme Court to *resume custody of the vessel.*

In 1883, in the case of the "Mary N. Hogan," a vessel intended to be employed in the service of the Haytien insurgents, Judge Brown refused to release the vessel on stipulation, and his view of the subject appears in full in the Appendix hereto, pages 6 to 8, from which the following extract is made. Speaking of Section 5283 the learned Judge says—

> "That section is rightly invoked to enable the Government to preserve itself from large possible liabilities through a violation of its treaty obligations to Hayti. IT IS CLEARLY NOT THE INTENTION OF SECTION 5283 IN IMPOSING A FORFEITURE TO ACCEPT THE VALUE OF THE VESSEL AS THE PRICE

> OF A HOSTILE EXPEDITION AGAINST A FRIENDLY POWER, which might entail a hundred-fold greater liabilities on the part of the Government. No unnecessary interpretation of the rules should be adopted, which would permit that result."

In the case of the "Three Friends" Judge Locke sought to make a distinction from the case of the "Hogan," because the libel before him charged a past offense several months prior to the seizure, and he released the "Three Friends" on stipulation.

The Supreme Court, however, did not find Judge Locke's distinction well taken, and decided that his order releasing the "Three Friends" was improvidently granted, and directed that the custody of the vessel should be resumed.

The main question in the "Three Friends" case was whether a recognition of belligerency was a necessary prerequisite to the application of Section 5283 to vessels employed in the service of the Cuban insurgents. The Supreme Court decided that it was not, and in that connection used the following language:

> "In Wiborg *vs.* The United States, 163 U. S. 632, which was an indictment under Section 5286, *we referred to the eleven sections from 5281 to 5291, inclusive, which constitute Title LXVII of the Revised Statutes*, and said, 'The statute was undoubtedly designed in general to secure neutrality in war between two other nations, or between contending parties recognized as belligerents, but *its operation is not necessarily dependent on the existence of such state of belligerency*,' and the consideration of the present case, arising under Section 5283, confirms us in the view thus expressed."
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> . . . . . .
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> "Any other conclusion rests on the unreasonable assumption that the act is to remain ineffectual unless the Government incurs the restraints and liabilities incident to an acknowledgment of belligerency; ON THE ONE HAND PECUNIARY DEMANDS *reprisals or even war may be the consequence of failure in the performance of obligations towards a friendly power, while* ON THE OTHER, *the recognition of belligerency involves the rights of blockade, visitation, search and seizure of contraband articles on high seas and abandonment of all claims for reparation on account of damages suffered by our citizens from the prevalence of warfare.*
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> "No intention to circumscribe the means of avoiding the ONE by imposing as a condition the acceptance of the contingencies of the OTHER can be imputed."

Good faith towards friendly nations requires the prevention of the use of our territory as a base for hostilities, and Section 5283 furnishes the means of prevention.

The President, in his message of December 2, 1895, quoted by the Supreme Court in the case of the "Three Friends," states that the Cuban insurrection:

> "by arousing sentimental sympathy and inciting adventurous support among our people has entailed earnest effort on the part of this Government *to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty.*"

Admitting the individual sympathy of citizens, the President holds that—

> "the plain duty of their Government is to observe in good faith the recognized obligations of international relationship."

And he adds:

> "The performance of this duty should not be made more difficult by a disregard on the part of our citizens of the obligations growing out of their allegiance to their country, which should restrain them from violating, as individuals, the neutrality which the nation, of which they are members, is bound to observe in its relations to friendly sovereign states."

In the same opinion which includes the above quotations, the Supreme Court says:

> "As mere matter of municipal administration no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while *good faith* towards friendly nations requires their PREVENTION."

The Supreme Court has in the case of Wiborg *vs.* The United States (163 U. S.) said:

> "Section 5286 defines certain offenses against the United States and denounces punishment therefor, but, although a penal statute, it is to be reasonably construed so as not to defeat the obvious intention of the legislature."

This is equally true as to section 5283, the first part of which makes criminal and punishes as a substantive offense, the doing or being knowingly concerned in doing any of the enumerated acts tending to furnish, fit or prepare a vessel within the United States with intent that she be employed to commit hostilities against

the property or subjects of a friendly foreign sovereign and *a fortiori* is it true as to the forfeiture by civil proceedings of inanimate things affected by any of the acts and the intent denounced in the earlier part of the statute.

It has been judicially decided that *any kind* of vessels intended to commit *any kind* of hostilities may be forfeited under this section:

> "*Whatever may have been the intention of the legislators regarding the particular class of hostilities* they were desired to prevent, all we have to decide from is the *language* with which they have clothed their ideas, and this is BROAD ENOUGH TO INCLUDE ALL CLASSES OF HOSTILITIES. It has been ably argued that unless the vessel is so armed that she herself can be the offending party or thing, or, in other words, carries such an armament as *can throw projectiles from her port*, or is equipped as a *man-of-war* or armed vessel, the statute will not apply. The terms "PEACEFUL" and "WARLIKE," "FRIENDLY" and "HOSTILE" are thoroughly recognized; *and the line so plainly marked between what should be the course and conduct of a vessel engaged in a peaceful commercial venture and one fitted, prepared, and intended for hostilities, is so distinct and well defined as to permit no mistake, nor require a reference to a judicial decision.*"
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> "A VESSEL IS A PASSIVE INSTRUMENT, . . . AND IT MATTERS BUT LITTLE . . . WHETHER SHE THROW SHOT AND SHELL FROM HER PORTS OR DISPATCH BOAT LOADS OF ARMED MEN FROM HER GANGWAYS." (Appendix, pp. 39, 40.)

The third section of the Act of 1818, now Section 5283, was directly before the Supreme Court in a criminal case in 1832.

Only once prior to the "Three Friends" case has a proceeding directly to enforce the section come before the Supreme Court and that was in a criminal case. United States *vs.* Quincy, 6 Pet. 445. The court say (p. 464):

> "The instruction which ought to be given to the jury under these prayers involves the construction of the act of Congress touching the extent to which the preparation of the vessel for cruising or committing hostilities must be carried before she leaves the limits of the United States, in order to bring the case within the act.
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> "On the part of the defendant it is contended, that the vessel must be fitted out and armed, if not complete, so far

at least as to be prepared for war, or in a condition to commit hostilities.

"WE DO NOT THINK THIS IS THE TRUE CONSTRUCTION OF THE ACT.

. . . . . .

"To bring him within the words of the act, it is not necessary to charge him with being concerned in fitting out AND arming. THE WORDS OF THE ACT ARE, FITTING OUT OR ARMING. EITHER WILL CONSTITUTE THE OFFENSE.

. . . . . .

"This varied phraseology in the law was probably employed with a view to embrace all persons, of every description, who might be engaged, directly or indirectly, in preparing vessels with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged. Hence the great latitude given to the courts in affixing the punishment, viz., a fine not more than ten thousand dollars and imprisonment not more than three years.

"We are, accordingly, of opinion that it is not necessary that the jury should believe or find that the 'Bolivar,' when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment."

What is now Section 5283 has often been indirectly before the Supreme Court in prize causes.

The third sections of the Acts of 1794 and 1818, from which Section 5283 is taken, have been frequently before the Supreme Court in prize causes, involving captures made by vessels unlawfully fitted out or manned within the United States.

Chief Justice Marshall in the case of the "Gran Para," 7 Wheat., p. 488, speaking of the Act of 1794, says:

"The third section makes it penal for any person within any of the waters of the United States to be knowingly concerned in the furnishing, fitting out OR arming of any ship or vessel with intent that *such ship* or vessel shall be employed in the service of any foreign prince or state to cruise, etc."

"It is too clear for controversy that the 'Irresistible' comes within this section of the law also."

In that case the arms and ammunition were taken as *cargo* and the men shipped as for an ordinary voyage. But the court said:

> "That the *arms and ammunition* were cleared out *as cargo* cannot vary the case nor is it thought to be material that the men were enlisted as for a common mercantile voyage. *There is nothing resembling a commercial adventure in any part of the transaction.*"

In this same case Chief Justice Marshall, speaking of the contention that the fitting out of the vessel in Baltimore was a commercial venture; that the hostile character was only assumed at La Plata, and no captures having been made on the way out, the offense was there deposited, says:

> "If this were to be admitted in such a case as this the laws for the preservation of our neutrality would be completely eluded so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and reenlisting their crew to become perfectly legitimate cruisers purified from ever taint contracted at the place where all their real force and capacity for annoyance was acquired. THIS WOULD, INDEED, BE A FRAUDULENT NEUTRALITY, DISGRACEFUL TO OUR OWN GOVERNMENT, AND OF WHICH NO NATION WOULD BE THE DUPE. It is impossible for a moment to disguise the facts that the arms and ammunitions taken on board the 'Irresistible' at Baltimore were taken for the purpose of being used on a cruise, and that the men there enlisted, though engaged in form as for a commercial voyage, were not so engaged in fact. THERE WAS NO COMMERCIAL VOYAGE, AND NO INDIVIDUAL OF THE CREW COULD BELIEVE THAT THERE WAS ONE. Although there might be no express stipulation to serve on board the 'Irresistible' after her reaching the La Plata and obtaining a commission, it must have been completely understood that such was to be the fact. For what other purpose could they have undertaken this voyage. EVERYTHING THEY SAW, EVERYTHING THAT WAS DONE, SPOKE A LANGUAGE TOO PLAIN TO BE MISUNDERSTOOD."

See also—

The "Estrella," 4 Wheat., p. 309.
The "Bello Corrunes," 6 Wheat., p. 171.
The "Santissima Trinidad," 7 Wheat., 337.

The reasoning of the Supreme Court in its construction and application of the acts for the suppression of the Slave Trade in civil proceedings for the forfeiture of ships is interesting and instructive.

In the case of the "Emily" and "Caroline," 9 Wheat. 386, the vessels were libelled under the Slave Trade Act and the court speaking of that act says:

> "The first branch of the prohibiting part of this section is very broad and comprehensive, using various terms appropriate to the preparation for a voyage: 'Shall not build, fit, equip, load or otherwise prepare any ship,' etc. In the forfeiting part of the section these various terms are not repeated, but doubtless intended to be coextensive and included under the words *so fitted out as aforesaid.* Under this law then the forfeiture is incurred either by fitting out, or in other words preparing a vessel, within the United States; or by causing a vessel to sail from the United States, for the purpose of carrying on the slave trade; two distinct acts either of which draws after it the same consequence, the forfeiture of the vessel. . . . In admiralty proceedings a libel in the nature of an information does not require all the formality and technical precision of an indictment at common law. If the allegations are such as plainly and distinctly to mark the offense it is all that is necessary. . . .
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> "The object in view by the section of the law now under consideration was to prevent the preparation of vessels in our own ports which were intended for the slave trade. Hence is connected with this preparation, whether it consists in building, fitting, equipping or loading, the purpose for which the act is done. *The law looks at the intention and furnishes authority to take from the offender the means designed for the perpetration of the mischief.* This is not punishing criminally the intention merely; it is the preparation of the vessel and the purpose for which she is to be employed that constitute the offense and draw after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches. To apply the construction contended for on the part of the claimant, that the fitting or preparation must be complete and the vessel ready for sea before she can be seized, would be rendering the law in a great measure nugatory and enable offenders to elude its provisions in the most easy manner."

Claimant in admiralty proceedings must explain suspicious and condemnatory circumstances.

In the civil proceedings in admiralty for forfeitures under Section 5283 there is no presumption of innocence—there is no jury—there is no requirement of proof of the offense beyond a reasonable doubt. It is sufficient if the United States by a fair preponderance of evidence shall convince the mind of the court that the forfeiture has been incurred. The burden is on the claimant to establish an innocent explanation of suspicious and condemnatory circumstances.

In the "Emily" and "Caroline" (*ubi supra*) a civil proceeding in admiralty for forfeiture under the slave trade act the Supreme Court say:

> "There was *no attempt whatever by the claimant to explain the object of these particular fitments* or to show that the destination of the vessels was other than that of the slave trade. Nor has his counsel on the argument here set up for him any such pretense. *We may, therefore, safely conclude that the purpose for which these vessels were fitting was the slave trade; and, if so, the right of seizure attached.*"

And again in the case of the "Luminary," 8 Wheat 408, 411, a proceeding for forfeiture under the navigation laws, Mr. Justice Story, speaking of certain documents not produced by claimants, says:

> "If they would not prove the justice of the *suspicions*, which the *uncommon circumstances* of the case necessarily excite it seems incredible that they should be suppressed. The suppression therefore justifies the court in saying that the United States have made out a *prima facie* case, and that the burthen of proof to rebut it rests on the claimant."

And speaking of the motive for the suspicious conduct of the claimants, he adds:

> "There would be no *absurdity* though there would be *illegality* in such conduct. The parties cannot complain that the court in a case LEFT SO BARE OF ALL REASONABLE EXPLANATION CONSTRUE THEIR SILENCE INTO PRESUMPTIVE GUILT." (P. 412.)

Section 5283 has been construed and forfeitures of ships and arms decreed in three different districts where the ships were not technically ships of war.

What is necessary for a forfeiture under this section has also been the subject of authoritative judicial exposition, not, it is true, by the judicial tribunal of last resort, but by three courts of competent

jurisdiction, district courts of the United States, in three different States of the Union, in the case of vessels which were not vessels of war in the ordinary sense, or vessels adapted to hostilities generally, but vessels adapted to commit the particular kind of hostilities contemplated.

Reference is made to the case of the "Mary N. Hogan," 18 Federal Reporter, page 529, where a forfeiture under Section 5283 was decreed by Judge Brown in the District Court of the United States for the Southern District of New York, on the 23d of November, 1883, of a—

> "steam tug, of about 37 tons register, 90 feet long, and 20 feet beam, and 9 feet depth of hold, built for ordinary towing service about the harbor of New York, in no respect distinguishable by any peculiarities from the numerous other tugs of her class in this port." (See Appendix, pp. 1–18.)

Also to the cases of the United States *vs.* 214 Boxes of Arms, etc., and the United States *vs.* 140 Kegs of Gunpowder, 20 Federal Reporter, page 50, in which Judge Hughes, in the District Court of the United States for the Eastern District of Virginia, on the 4th day of February, 1884, decreed two forfeitures under Section 5283, of the arms and munitions provided for the same *hostile* expedition proceeded against in the above cause. (See Appendix, pp. 18–35.) The third proceeding referred to is the case of the "City of Mexico," 28 Federal Reporter, page 148, in which Judge Locke, in the District Court of the United States for the Southern District of Florida, decreed a forfeiture, under Section 5283, of the ship "City of Mexico," not as an armed vessel, but as a vessel furnished and fitted out with intent that such vessel shall be employed to *commit hostilities.* (See Appendix, pp. 36–43.)

In the three proceedings above mentioned both the ships and the munitions of war were valuable, but the owners, whoever they were, prosecuted no appeal from the decisions of the district courts, which therefore not only disposed of the right of private property by forfeiting the vessels and materials, under the provisions of Section 5283, but remain, until a different construction be announced by a higher court, as authoritative judicial constructions of the meaning of that section.

All these cases were proceedings in admiralty, tried and determined by the court without the aid of a jury. Neither the Government of the United States, which filed the libel in rem, nor the claimants, who sought to assert their rights of property to prevent a forfeiture, had any right under the Constitution and laws of the United States to a trial by jury.

The Act of 1845, which permitted a jury in certain cases in admiralty, now incorporated in Section 566, R. S., was limited to "causes of admiralty and maritime jurisdiction, relating to any

matter of CONTRACT or TORT," and the same section had already provided—

> "that the trial of issues of fact in the district courts in all cases EXCEPT *cases in equity and cases of admiralty and maritime jurisdiction*, shall be by jury."

The forfeiture of vessels by proceedings in admiralty on the instance side of the court have been sought and decreed under the laws for the suppression of the slave trade (United States *vs.* "The Sally," 2 Cranch, 406), under the non-intercourse laws (United States *vs.* "Betsey" and "Charlotte," 4 Cranch, 443), under the laws in regard to seal fishing in Alaska (The "W. P. Sayard," ex parte Cooper, 143 United States; The "Silvia Handy," ditto), under the custom laws, Sections 2868 and 3109 (United States *vs.* "Coquitlan," District Court of Alaska, 1893), and under the Navigation Laws. (The "Luminary," 8 Wheat.)

The "Mary N. Hogan."

In the opinion on the merits (Appendix, p. 9) Judge Brown says:

> "*From the evidence it clearly appears that though the 'Hogan' was wholly unadapted to effective naval operations against any considerable organized opposition, she could be of the greatest service to the insurgents by her light draft and considerable speed in landing or taking off men at unprotected points off the coast of Hayti*, by watching her opportunities of running in and out, as well as in offensive demonstrations against defenseless parts of the islands, with little to fear from the slight naval resources of the lawful government."

After completing the review of the testimony the learned judge continues (Appendix, p. 13):

> "The only rational inference that can be drawn from the above facts is that the 'Hogan' was designed to be used for the conveyance of arms and ammunition in aid of the insurrectionists in Hayti, and for other aid, and such hostile demonstrations as she was fit to make against the defenseless parts of the coast."

Later, the judge speaks of the pretense that the "Hogan" was destined upon a legitimate business as: "only a cover for departure upon a *hostile expedition*," and finally concludes that the evidence established (Appendix, p. 18):

> "A *hostile* expedition organized and dispatched from our ports in separate parts, to be united at the common rendezvous on the high seas, and to proceed thence to Hayti in completion of the original *hostile* purpose with which the

> different parts were dispatched from our shores. Such an expedition is as much within the prohibition of Section 5283 of the Revised Statutes as if all its parts were united and complete upon one single vessel. . . . A decree for the condemnation of the 'Mary N. Hogan' must therefore be awarded."

It is to be noted that the expedition spoken of by the learned judge is not simply a "*military* expedition or enterprise," but a *hostile* expedition, *i. e.*, an expedition to commit hostilities.

United States vs. 140 Kegs of Powder. United States vs. 214 Boxes of Arms.

The cases in the District Court of the United States for the Eastern District of Virginia, 20 Federal Reporter, p. 50, were with reference to the very arms and ammunition which were to have been placed on board the "Mary N. Hogan," which were seized in the port of Richmond on board the schooner "E. G. Erwin."

Judge Hughes, in his opinion in the two cases against the Boxes of Arms and Kegs of Powder, says (Appendix, p. 28):

> "The two proceedings founded upon Section 5283 of the Revised Statutes of the United States, which, so far as is applicable, to this case provides, that every person who, within the limits of the United States, attempts to fit out and arm, or is knowingly concerned in the furnishing, fitting out or arming of any vessel with intent that such vessel shall be employed in the service of any foreign people to cruise or commit hostilities against the citizens of any foreign state with which the United States are at peace, shall be punished as provided by law; and that all the materials, arms and ammunition which may have been procured for the equipment of such a vessel shall be forfeited."

Speaking of the material facts with relation to the "Mary N. Hogan," which were, of course, part of the evidence for condemnation, in regard to the arms, the learned judge continues (Appendix, p. 31):

> "I probably have a right to regard that part of the case before me as res judicata; but feeling disposed, in the cases at bar, to consider the question of the character and destination of the 'Hogan' as an original one, I have gone anxiously and thoroughly over all the voluminous evidence before me on that subject, and find myself constrained to adopt precisely the conclusions that were reached by Judge Brown, and are set forth in his opinion in that case."

To the searching analysis of the facts applied by Judge Brown in the case of the "Hogan," Judge Hughes adds the following (Appendix, p. 32):

> "The 'Hogan' bore less than two feet of free-board. A cargo of 20 or 30 tons, which was the weight of these munitions, would have put down her deck to within 12 inches of the water. Even on a smooth July sea, a voyage to the West Indies would have been a desperate commercial venture, and yet we hear nothing of insurance either upon vessel or cargo. Commercially the enterprise would have been reckless. As a military venture it was no more desperate than military raids usually are, especially upon the high seas."

Again (Appendix, pp. 33, 34, 35):

> "The general test of contraband as to neutrals is whether the contraband goods are intended for sale in a neutral market, or whether the direct and intended object is to supply the enemy with them. . . . In the case at bar the question is in different form, while the principle is identical. It concerns the furnishing, fitting out and arming, in a neutral jurisdiction, of *a vessel about to proceed directly to the theatre of hostilities, and to engage in military operations.* The 'Hogan' as already concluded, was intended for such a purpose, and on receiving these arms was intended to be directly bound to the waters of Hayti. These military goods were not to be taken to a neutral port to be sold in open market; they were not for sale at all; they were intended to be used on that steam tug in flagrant hostilities. When they left Frazer's warehouse they ceased to be articles of commerce. They were no longer for sale. They were to be put in a covert and deceptive manner upon a vessel at sea, and to constitute her outfit for engaging in hostilities against a state with which the United States are at peace. It is useless to cite legal authorities on this subject. The law is in the form of an express statute. Its principles are plain and elementary, and need only to be stated to be comprehended and appoved." . . .
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> "It is useless for me to reiterate what has so often been ruled in principle, that the placing of these goods directly on the 'Hogan' by those knowingly concerned in fitting out that vessel, was not necessary to justify the condemnation of the goods. If they had passed through the hands of many draymen, and other intermediaries, and over many decks, before reaching the vessel whose outfit and armament they were intended to be, *that ultimate destination made them guilty goods, and subjected them to condemnation.*"

"I will sign a decree of condemnation and sale in both of these cases."

The "City of Mexico."

In the case of the "City of Mexico," 28 Federal Reporter, page 18, Judge Locke, in the District Court of the United States for the Southern District of Florida, thus recites the allegations of the libel (Appendix, p. 38–40):

> "The libel for forfeiture alleges that certain persons were knowingly concerned in the furnishing and fitting out of said vessel, with the intent that she should be employed to cruise or commit hostilities against the people of the State of Honduras, with whom the United States is at peace." . . .
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> "The terms 'furnishing' and 'fitting' have no legal or technical meaning which requires a construction different from the ordinary acceptation in maritime and commercial parlance, which is to supply with anything necessary or needful That by the furnishing and fitting out is intended something different from the arming, is not only apparent from the language of the statute, but it has been judicially determined in United States *vs.* Quincy, 6 Peters, 445. This vessel was furnished and fitted out, in the usual acceptation of the terms, provided with the necessary supplies, and put in a condition for proceeding to sea, within the United States. Whether she was well furnished or thoroughly fitted out is not the question, if she was so supplied as to proceed on her way. She was furnished with the ordinary engineer's supplies and steward's stores, and sailed from New York the 22d of December, 1885. What was the intent with which she was fitted out, and either dispatched or taken on her way by the parties in charge, becomes a more important and difficult question, involving conclusions both of law and fact.
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> "WHATEVER MAY HAVE BEEN THE INTENTION OF THE LEGISLATORS REGARDING THE PARTICULAR CLASS OF HOSTILITIES THEY WERE DESIRED TO PREVENT, ALL WE HAVE TO DECIDE FROM IS THE LANGUAGE WITH WHICH THEY HAVE CLOTHED THEIR IDEAS, AND THIS IS BROAD ENOUGH TO INCLUDE ALL CLASSES OF HOSTILITIES. *It has been ably argued that unless the vessel is so armed that she herself can be the offending party or thing, or, in other words, carries such an armament as can throw projectiles from her port, or is equipped as a man-of-war or armed vessel, the statute will not apply.* The terms 'PEACEFUL' and 'WARLIKE,' 'FRIENDLY' and 'HOSTILE,' are thoroughly recognized; and the line so plainly marked between what should be the course and conduct *of a vessel engaged in a peace-*

ful commercial venture and ONE FITTED, PREPARED, AND INTENDED FOR HOSTILITIES, is so distinct and well defined as to permit no mistake, nor require a reference to a judicial decision.

"A PEACEFUL act, a PEACEFUL voyage, cannot be a HOSTILE one; *nor can acts looking towards war or enmity escape from the general term* 'HOSTILITIES.' . . . *A vessel is a passive instrument, and is but made the means of success; and it matters but little, in the effect of her hostilities whether she throws shot and shell from her ports, or dispatches boat-loads of armed men from her gangways.*"

In the case of the "City of Mexico" the pretense was that she was bound on a peaceful and legitimate voyage connected with a scheme for colonization. The learned judge, after reviewing the circumstances, concludes (Appendix, p. 43):

"The whole character of the voyage shows it was *not a commercial one. No cargo was taken, no cargo looked for—only arms and ammunition, which are not the implements of peaceful colonization or agriculture. The arms were not shipped or to be received for sale as a financial speculation.* There was no war no war in that part of the world going on or in contemplation, except what was intended by General Delgago, for whom they were intended. I can arrive at but one conclusion: *that acts of hostility were contemplated and intended at the time of furnishing and fitting out the 'City of Mexico,'* in which she was to take an active part, and that it was intended that she should receive arms and ammunition, and, in the language of the statutes, *she should commit hostilities.*

"The degree of forfeiture must follow."

The record and proceedings of the courts of the United States show that the Cuban insurgents have employed a fleet which within the United States was "fitted, prepared, and intended for hostilities."

Without going outside of the records and proceedings of the courts of the United States, the following steamers appear to have been employed in the service of the Cuban insurgents, in committing hostilities, by sending boat loads of armed men, in hostile array, from their gangways to the shores of Cuba.

All of these vessels were, within the limits and jurisdiction of the United States, furnished, fitted out or armed with intent to commit these hostilities. In every case surf-boats or life-boats adapted to the landing of a considerable number of men, with arms and munitions, in addition to the ship's boats, were provided for the purpose of committing these hostilities, and in several instances cannon were mounted upon the decks at the time of committing the contemplated hostilities.

The steamer "Woodall" figures in the late prosecution of Dr. Luis in the District Court at Baltimore.

The "Horsa" figures in the case of Wiborg which went to the Supreme Court. In that case it appears that a cannon was mounted on and fired from her decks.

The "Commodore" was libelled for violation of Section 5283 at Wilmington, North Carolina, but the libel was dismissed and no appeal was taken by the United States. The "Commodore" remained actively employed in the service of the insurgents until she sunk last winter when she was overloaded with arms and men on her way to Cuba.

The "Laurada" has figured in the case of United States *vs.* Hughes in the Eastern District of South Carolina, in United States *vs.* Nunez and Dickman in the District Court of the United States for the Southern District of New York, in United States *vs.* Hart in the District Court of the United States for the Eastern District of Pennsylvania.

In the case of United States *vs.* Hart, the "Dauntless" also prominently figures, as she has in various proceedings in Jacksonville, Florida, and Brunswick, Georgia.

The "Bermuda" figures in the case of United States *vs.* Hart, Hughes et al. in the District Court for the Southern District of New York. The "Leon" in United States *vs.* Svanoe et al. in the Eastern District of Pennsylvania. The "Three Friends" in the case which went to the Supreme Court, and in other proceedings.

The "Bermuda," "Horsa" and "Leon" are foreign vessels; all the rest are American.

A foreign vessel as well as an American is subject to the consequences of her acts within our jurisdiction, nor can she evade those consequences by completing her preparation to commit hostilities after she has left an American port.

In the case of a foreign vessel whose captain was indicted under Section 5286 (Wiborg *vs.* U. S., 163 U. S.), the Supreme Court, after noticing that the expedition started in the Southern District of New York, and did not come into immediate contact with the defendants at any point within the jurisdiction of the United States, as the "Horsa" was a foreign vessel, holds:

> "The 'Horsa's' preparation for sailing and *the taking aboard of the two boats at Philadelphia* constituted a preparation of means for the expedition or enterprise, and if the defendants knew of the enterprise when they participated in such preparation, then they committed the statutory crime upon American soil and in the Southern District of Pennsylvania where they were indicted and tried."

Of the fleet of five steamers and three ocean tugs above enumerated, the "Woodall" and "Commodore" have foundered. The "Horsa" and "Leon" have not of late been actively employed, but

the "Laurada," "Dauntless," "Bermuda" and "Three Friends" are still uncondemned, in spite of their many offenses against the law of the United States.

It is impossible to have any commercial communication with the Cuban insurgents in the field. The latter hold no port, and have never had permanent possession of any point upon the sea coast.

To supply them with arms and munitions, it is absolutely necessary for the Cuban sympathizers in the United States not only "to begin, set on foot, prepare and provide the means for a military expedition or enterprise," but they must have a vessel fitted to commit the contemplated hostilities. They must become the owners of the arms and ammunition before they start, for there can be no commercial consignee in Cuba who can receive them for the insurgents. They must control the vessel which takes them, for its proceedings must be very different from that of a vessel engaged in the commercial and peaceful business of carrying cargo and passengers. The arms must be accompanied by men to land and carry them. These men must themselves be armed in order to safely reach the insurgent forces. In order that a landing of the hostile force may be effected the vessel itself must be coaled and provisioned so as to stand off and on in case of need, must be provided with a pilot who knows the Cuban waters and the whereabout and signals of the insurgents, and the vessel must be specially adapted for this warlike use by being provided with boats to effect the landing of the men and arms, and in every instance *is* armed by the hostile force on board and in many by the mounting of cannon on her decks.

To constitute a military expedition or enterprise "It is not necessary," in the words of Judge Butler in the Wiborg case, approved by the Supreme Court—

> "that the men shall be drilled, put in uniform or prepared for efficient service, nor that they should have been organized as or according to the tactics or rules which relate to infantry, artillery, or cavalry."

To furnish, fit out or arm a vessel to commit hostilities, it is not necessary that she should be built or equipped according to any of the rules or categories of vessels of war. She need not be a battleship, a cruiser, a gunboat or a torpedo boat. "A VESSEL," said Judge Locke, in 1886, in the case of the "City of Mexico,"—

> "IS A PASSIVE INSTRUMENT AND IS MADE BUT THE MEANS OF SUCCESS, AND IT MATTERS BUT LITTLE IN THE EFFECT OF HER HOSTILITIES whether SHE THROW SHOT AND SHELL FROM HER PORTS OR DISPATCHES BOAT-LOADS OF ARMED MEN FROM HER GANGWAYS."

It is enough if by any sort of preparation she is fitted and intended to commit any sort of hostilities. The landing of a hostile force in

any country would be undoubtedly a hostility—an act of war which would justify a declaration of war. It would be such a hostility as would be a breach of an armistice. It *is* a hostility committed by the vessel fitted and intended to effect the landing. The end and object of the voyage is such as to deprive it of any commercial, peaceful or innocent character, and to make it clearly hostile, warlike and punishable by forfeiture under our statutes.

In the same manner and for like reasons the arms, munitions and stores which may have been procured for the equipment of such a vessel are subject to forfeiture.

Arms, ammunition, and stores may be seized as forfeited before they are put upon the vessel intended to commit hostilities.

As to the seizure of arms and ammunition which may have been procured for the equipment of a vessel designed to commit hostilities, before they are placed on the vessel, Judge Hughes, in U. S. *vs.* Boxes of Arms (Appendix, p. 35), says:

> "It is useless for me to reiterate what has so often been ruled in principle that the placing of these goods directly on the 'Hogan' by those knowingly concerned in fitting out that vessel WAS NOT NECESSARY TO JUSTIFY THE CONDEMNATION OF THE GOODS. If they had passed through the hands of many draymen and other intermediaries and over many decks before reaching the vessel whose outfit and armament they were intended to be that ULTIMATE DESTINATION MADE THEM GUILTY GOODS, AND SUBJECTED THEM TO CONDEMNATION."

Finally, the 8th section of the Act of 1818, now Section 5287, gives clear power to the Executive to prevent violations of our neutrality laws, and in connection with the civil proceedings for forfeiture under Section 5283 would seem, as we contended at Geneva, to make a perfect code of municipal law to enable us to fulfil our international obligations without trusting to the uncertainties of criminal prosecutions or the misguided sympathies of juries.

The undersigned ventures to hope that the foregoing introduc- and accompanying compilation will be of some service to the courts and officers of the United States in the discharge of their duties and of some interest to the profession and others.

So far as the proceedings to enforce Section 5283 are directed against inanimate things they are purely civil and to be tried by a court without the intervention of a jury, and as this pamphlet is concerned wholly with that branch of the section, the undersigned has felt at liberty to freely discuss the matters involved in such proceedings.

CALDERON CARLISLE,
Legal Adviser of the Spanish Legation.

UNITED STATES vs. STEAMER THREE FRIENDS.

OPINION OF THE SUPREME COURT OF THE UNITED STATES, BY FULLER, CHIEF JUSTICE, RENDERED MARCH 1, 1897.

The steamer Three Friends was seized November 7, 1896, by the collector of customs for the district of St. Johns, Florida, as forfeited to the United States under Section 5283 of the Revised Statutes, and, thereupon, November 12, was libelled on behalf of the United States in the District Court for the Southern District of Florida.

The first two paragraphs of the libel alleged the seizure and detention of the vessel, and the libel then continued:

"Third. That the said steamboat or steam vessel, the 'Three Friends,' was on, to wit, on the twenty-third day of May, A. D. 1896, furnished, fitted out, and armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace.

"Fourth. That the said steamboat or steam vessel, 'Three Friends,' on, to wit, on the twenty-third day of May, A. D. 1896, whereof one Napoleon B. Broward was then and there master, and within the said Southern District of Florida, was then and there fitted out, furnished, and armed, with intent that said vessel, the said 'Three Friends,' should be employed in the service of a certain people, to wit, the insurgents in the island of Cuba, otherwise called the Cuban revolutionists, to cruise and commit hostilities against the subjects, property, and people of the King of Spain, in the said island of Cuba, with whom the United States are and were then at peace.

"Fifth. That the said steamboat or steam vessel 'Three Friends,' on to wit, on the twenty-third day of May, A. D. 1896, and whereof one N. B. Broward was then and there master, within the navigable waters of the United States, and within the southern district of Florida and the jurisdiction of this court, was then and there, by certain persons to the attorneys of the said United States unknown, furnished, fitted out, and armed, being loaded with supplies and arms and munitions of war, and it, the said steam vessel 'Three Friends,' being then and there furnished, fitted out, and armed with one certain gun or guns, the exact number to the said attorneys of the United States unknown, and with munitions of war thereof, with the intent, then and there to be employed in the service of a certain people, to wit, certain people then engaged in

armed resistance to the government of the King of Spain in the island of Cuba, and with the intent to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the said island of Cuba, and who, on the said date and day last aforesaid, and being so furnished, fitted out, and armed as aforesaid, then and there aforesaid, from the navigable waters of the United States, to wit, from the St. Johns River, within the southern district of Florida, and within the jurisdiction of this court aforesaid, proceeded upon a voyage to the island of Cuba aforesaid, with the intent aforesaid, contrary to the form of the statute in such case made and provided. And that by force and virtue of the acts of Congress in such case made and provided, the said steamboat or steam vessel, her tackle, engines, machinery, apparel, and furniture became and are forfeited to the use of the said United States.

"Sixth. And the said attorneys say that by reason of all and singular the premises aforesaid, and that by force of the statute in such case made and provided, the aforesaid and described steamboat or steam vessel 'Three Friends,' her tackle, machinery, apparel, and furniture, became and are forfeited to the use of the said United States."

And concluded with a prayer for process and monition and the condemnation of the vessel as forfeited. Attachment and monition having issued as prayed, Napoleon B. Broward and Montcalm Broward, master and owners, intervened as claimants; applied for an appraisement of the vessel and her release on stipulation; and filed the following exceptions to the libel:

"1. Sec. 5283, for an alleged violation of which the said vessel is sought to be forfeited, makes such forfeiture dependent upon the conviction of a person for doing the act or acts denounced in the first sentence of said section, and as a consequence of conviction of such person; whereas the allegations in said libel do not show what persons had been guilty of the acts therein denounced as unlawful.

"2. The said libel does not show the 'Three Friends' was fitted out and armed, attempted to be fitted out and armed, or procured to be fitted out and armed in violation of said section.

"3. The said libel does not show the said vessel was so fitted out and armed, or so attempted to be fitted out and armed, or so procured to be fitted out and armed or furnished, with the intent that said vessel should be employed in the service of a foreign prince, or state, or of a colony, district, or people with whom the United States are at peace.

"4. The said libel does not show by whom said vessel was so fitted out.

"5. Said libel does not show in the service of what foreign prince, or state, or colony, or district, or body politic the said vessel was so fitted out.

"6. The said libel does not show that said vessel was so armed

or fitted out or furnished with the intent that such vessel should be employed in the service of any body politic recognized by or known to the United States as a body politic."

The vessel was appraised at $4,000 and a bond on stipulation given for $10,000, upon which she was directed to be released. The cause came on to be heard upon the exceptions to the libel, and on January 18 the following decree was entered:

"This cause coming on to be heard upon exceptions to the libel and having been fully heard and considered, it is ordered that said second, third, fifth, and sixth exceptions be sustained and that the libellant have permission to amend said libel, and in event said libel is not so amended within ten days the same stand dismissed and the bond herein filed be canceled."

From this decree the United States, on January 23, prayed an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, which was allowed and duly prosecuted.

The following errors were assigned:

"First. For that the court over the objection of the libellants allowed the said steam vessel 'Three Friends' to be released from custody upon the giving of bond.

"Second. For that the court erred in sustaining the 2d, 3d, 5th and 6th exceptions of the claimants to the libel of information of the libellants.

"Third. For that the court erred in entering a decree dismissing the libel of information herein."

On February 1 application was made to this court for a writ of certiorari to bring up the cause from said Circuit Court of Appeals, and, having been granted and sent down, the record was returned accordingly.

Mr. Chief Justice FULLER delivered the opinion of the Court:

It is objected that the decree was not final, but inasmuch as the libel was ordered to stand dismissed if not amended within ten days, the prosecution of the appeal, within that time, was an election to waive the right to amend and the decree of dismissal took effect immediately.

In admiralty cases, among others enumerated, the decree of the Circuit Court of Appeals is made final in that court by the terms of Section 6 of the judiciary act of March 3, 1891, but this court may require any such case, by certiorari or otherwise, to be certified "for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court," that is, as if it had been brought directly from the District or the Circuit Court. 26 Stat. 826, c. 517, §6.

Accordingly the writ of certiorari may be issued in such cases to the Circuit Court of Appeals, pending action by that court, and, although this is a power not ordinarily to be exercised, American Construction Co. *v.* Jacksonville Railway, 148 U. S. 372, 385, we

were of opinion that the circumstances justified the allowance of the writ in this instance, and the case is properly before us.

We agree with the District Judge that the contention that forfeiture under section 5823 depends upon the conviction of a person or persons for doing the acts denounced is untenable. The suit is a civil suit *in rem* for the condemnation of the vessel only, and is not a criminal prosecution. The two proceedings are wholly independent and pursued in different courts, and the result in each might be different. Indeed, forfeiture might be decreed if the proof showed the prohibited acts were committed though lacking as to the identity of the particular person by whom they were committed. The Palmyra, 12 Wheat. 1; The Ambrose Light, 25 Fed. Rep. 408; The Meteor, 17 Fed. Cas. 178.

The Palmyra, was a case of a libel of information against the vessel to forfeit her for a piratical aggression, under certain acts of Congress which made no provision for the personal punishment of the offenders, but it was held that, even if such provision had been made, conviction would not have been necessary to the enforcement of forfeiture. And Mr. Justice Story, delivering the opinion, said: "It is well known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the Crown. The forfeiture did not, strictly speaking, attach *in rem*; but it was a part, or at least a consequence, of the judgment of conviction. It is plain from this statement, that no right to the goods and chattels of the felon could be acquired by the Crown by the mere commission of the offense; but the right attached only by the conviction of the offender. The necessary result was, that in every case where the Crown sought to recover such goods and chattels, it was indispensable to establish its right by producing the record of the judgment of conviction. In the contemplation of the common law, the offenders right was not devested until the conviction. But this doctrine never was applied to seizures and forfeitures, created by statute, *in rem*, cognizable on the revenue side of the Exchequer. The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing; and this whether the offense be *malum prohibitum* or *malum in se*. The same principle applies to proceedings *in rem*, on seizures in the Admiralty. Many cases exist, where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personam*. Many cases exist where there is both a forfeiture *in rem* and a personal penalty. But in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been and so this court understands the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by any criminal proceeding *in personam*," And see The Malek Adhel, 2 How. 210; United States *v.* The Little Charles, 1 Brock. 347.

The libel alleged that the vessel was "furnished, fitted out and

armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace."

The learned district judge held that this was insufficient under section 5283, because it was not alleged "that said vessel had been fitted out with intent that she be employed in the service of a foreign prince or state, or of any colony, district or people recognized as such by the political power of the United States."

In Wiborg *v.* United States, 163 U. S. 632, which was an indictment under section 5286, we referred to the eleven sections from 5281 to 5291, inclusive, which constitute Title LXVII of the Revised Statutes, and said: "The statute was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency," and the consideration of the present case arising under section 5283 confirms us in the view thus expressed.

It is true that in giving a *resume* of the sections, we referred to section 5283 as dealing "with fitting out and arming vessels in this country in favor of one foreign power as against another foreign power with which we are at peace," but that was matter of general description, and the entire scope of the section was not required to be indicated.

The title is headed "Neutrality," and usually called by way of convenience the "Neutrality Act," as the term "Foreign Enlistment Act" is applied to the analogous British statute, but this does not operate as a restriction.

Neutrality, strictly speaking, consists in abstinence from any participation in a public, private, or civil war, and in impartiality of conduct toward both parties, but the maintenance unbroken of peaceful relations between two powers when the domestic peace of one of them is disturbed is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency. And, as mere matter of municipal administration, no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while good faith towards friendly nations requires their prevention.

Hence, as Mr. Attorney General Hoar pointed out, 13 Op. 178, though the principal object of the act was "to secure the performance of the duty of the United States, under the law of nations, as a neutral nation in respect of foreign powers," the act is nevertheless an act "to punish certain offenses against the United States by fines,

imprisonment, and forfeitures, and the act itself defines the precise nature of those offenses."

These sections were brought forward from the act of April 20, 1818, (3 Stat. 447, c. 88,) entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned," which was derived from the act of June 5, 1794, (1 Stat. 381, c. 50,) entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States,'" and the act of March 3, 1817, (3 Stat. 370, c. 58,) entitled "An act more effectually to preserve the neutral relations of the United States."

The piracy act of March 3, 1819, (3 Stat. 510, c. 77; Rev. Stat. §§ 4293, 4294, 4295, 4296, 5368,) supplemented the acts of 1817 and 1818.

The act of 1794, which has been generally recognized as the first instance of municipal legislation in support of the obligations of neutrality, and a remarkable advance in the development of International law, was recommended to Congress by President Washington in his annual address on December 3, 1793; was drawn by Hamilton; and passed the Senate by the casting vote of Vice-President Adams. Ann. 3d Cong. 11, 67. Its enactment grew out of the proceedings of the then French Minister, which called forth President Washington's proclamation of neutrality in the spring of 1793. And though the law of nations had been declared by Chief Justice Jay, in his charge to the grand jury at Richmond, May 22, 1793, (Wharton's State Trials, 49, 56,) and by Mr. Justice Wilson, Mr. Justice Iredell and Judge Peters, on the trial of Henfield in July of that year, (Id. 66, 84,) to be capable of being enforced in the courts of the United States criminally, as well as civilly, without further legislation, yet it was deemed advisable to pass the act in view of controversy over that position, and, moreover, in order to provide a comprehensive code in prevention of acts by individuals within our jurisdiction inconsistent with our own authority, as well as hostile to friendly powers.

Section 5283 of the Revised Statutes is as follows:

"Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or State, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or State, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such

vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

By referring to section three of the act of June 5, 1794, section one of the act of 1817, and section three of the act of 1818, which are given in the margin,* it will be seen that the words "or of any

*Act of June 5, 1794: "SEC. 3. That if any person shall within any of the ports, harbors, bays, rivers or other waters of the United States, fit out and arm or attempt to fit out and arm or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars and the term of imprisonment shall not exceed three years, and every such ship or vessel with her tackle, apparel and furniture together with all materials, arms, ammunition and stores which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of any person who shall give information of the offense, and the other half to the use of the United States."

Act of March 3, 1817: "That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming, of any such ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people to cruise or commit hostilities, or to aid or co-operate in any warlike measure whatever, against the subjects, citizens, or property, of any prince or state, or of any colony, district or people with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information, and the other half to the use of the United States."

Act of April 20, 1818: "§ 3. That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

colony, district, or people" were inserted in the original law by the act of 1817, carried forward by the act of 1818, and so into section 5283.

The immediate occasion of the passage of the act of March 3, 1817, appears to have been a communication under date of December 20, 1816, from the Portuguese minister to Mr. Monroe, then Secretary of State, informing him of the fitting out of privateers at Baltimore to act against Portugal, in case it should turn out that that government was at war with the "self-styled government of Buenos Ayres," and soliciting "the proposition to Congress of such provisions of law as will prevent such attempts for the future." On December 26, 1816, President Madison sent a special message to Congress, in which he referred to the inefficacy of existing laws "to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States," and, "with a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States," recommended further legislative provisions. This message was transmitted to the minister December 27, and he was promptly officially informed of the passage of the act in the succeeding month of March. Geneva Arbitration, Case United States, 138. In Mr. Dana's elaborate note to § 439 of his edition of Wheaton, it is said that the words "colony, district, or people" were inserted on the suggestion of the Spanish minister that the South American provinces in revolt and not recognized as independent might not be included in the word "state." Under the circumstances this act was entitled as "to preserve the neutral relations of the United States," while the title of the act of 1794 described it as "in addition" to the Crimes Act of April 30, 1790 (1 Stat. 112, c. 9), and the Act of 1818 was entitled in the same way. But there is nothing in all this to indicate that the words "colony, district or people" had reference solely to communities whose belligerency had been recognized, and the history of the times, an interesting review of which has been furnished us by the industry of counsel, does not sustain the view that insurgent districts or bodies, unrecognized as belligerents, were not intended to be embraced. On the contrary, the reasonable conclusion is that the insertion of the words "district, or people" should be attributed to the intention to include such bodies, as for instance, the so-called Oriental Republic of Artigas, and the governments of Petion and Christophe, whose attitude had been passed on by the courts of New York more than a year before in Gelston *v.* Hoyt, 13 Johns. 141, 561, which was then pending in this court on writ of error. There was no reason why they should not have been included, and it is to the extended enumeration as covering revolutionary bodies laying claim to rights of sovereignty, whether recognized or unrecognized, that Chief Justice

Marshall manifestly referred in saying, in The Gran Para, 7 Wheat. 471, 489, that the act of 1817 "adapts the previous laws to the actual situation of the world." At all events, Congress imposed no limitation on the words "colony, district, or people," by requiring political recognition.

Of course a political community whose independence has been recognized is a "state" under the act; and, if a body embarked in a revolutionary political movement, whose independence has not been, but whose belligerency has been, recognized, is also embraced by that term, then the words "colony, district, or people," instead of being limited to a political community which has been recognized as a belligerent, must necessarily be held applicable to a body of insurgents associated together in a common political enterprise and carrying on hostilities against the parent country, in the effort to achieve independence, although recognition of belligerency has not been accorded.

And as agreeably to the principles of international law and the reason of the thing, the recognition of belligerency, while not conferring all the rights of an independent state, concedes to the government recognized the rights, and imposes upon it the obligations, of an independent state in matters relating to the war being waged, no adequate ground is perceived for holding that acts in aid of such a government are not in aid of a state in the sense of the statute.

Contemporaneous decisions are not to the contrary, though they throw no special light upon the precise question.

Gelston *v.* Hoyt, 3 Wheat. 246, decided at February term, 1818 (and below January and February, 1816), was an action of trespass against the collector and surveyor of the port of New York for seizing the ship "American Eagle," her tackle, apparel, &c. The seizure was made July 10, 1810, by order of President Madison under section three of the act of 1794, corresponding to section 5283. The ship was intended for the service of Petion against Christophe, who had divided the island of Hayti between them and were engaged in a bloody contest, but whose belligerency had not been recognized. It was held that the service of "any foreign prince or state" imported a prince or state which had been recognized by the government, and as there was no recognition in any manner, the question whether the recognition of the belligerency of a *de facto* sovereignty would bring it within those words, did not arise.

The case of The Estrella, 4 Wheat. 298, involved the capture of a Venezuelan privateer on April 24, 1817. There was a recapture by an American vessel, and the prize thus came before the court at New Orleans for adjudication. The privateer was found to have a regular commission from Bolivar, issued as early as 1816, but it had violated section two of the act of 1794, which is the same as section two of the act of 1818, omitting the words "colony, district or people," (and is now section 5282 of the Revised Statutes,) by

enlisting men at New Orleans, provided Venezuela was a state within the meaning of that act. The decision proceeded on the ground that Venezuela was to be so regarded on the theory that recognition of belligerency made the belligerent to that intent a state.

In The Nueva Anna and Liebre, 6 Wheat. 193, the record of a prize court at "Galveztown," constituted under the authority of the "Mexican Republic," was offered in proof, and this court refused to recognize the belligerent right claimed, because our government had not acknowledged "the existence of any Mexican Republic or state at war with Spain;" and in The Gran Para, 7 Wheat. 471, Chief Justice Marshall referred to Buenos Ayres as a state within the meaning of the act of 1794.

Even if the word "state" as previously employed admitted of a less liberal signification, why should the meaning of the words "colony, district or people" be confined only to parties recognized as belligerent? Neither of these words is used as equivalent to the word "state," for they were added to enlarge the scope of a statute which already contained that word. The statute does not say *foreign* colony, district or people, nor was it necessary, for the reference is to that which is part of the dominion of a foreign prince or state, though acting in hostility to such prince or state. Nor are the words apt if confined to a belligerent. As argued by counsel for the Government, an insurgent colony under the act is the same before as after the recognition of belligerency, as shown by the instance of the colonies of Buenos Ayres and Paraguay, the belligerency of one having been recognized but not of the other, while the statute was plainly applicable to both. Nor is district an appropriate designation of a recognized power *de facto*, since such a power would represent not the territory actually held but the territory covered by the claim of sovereignty. And the word "people," when not used as the equivalent of state or nation, must apply to a body of persons less than a state or nation, and this meaning would be satisfied by considering it as applicable to any consolidated political body.

In United States *v.* Quincy, 6 Pet. 445, 467, an indictment under the third section of the act of 1818, the court disposed of the following, among other points, thus: "The last instruction or opinion asked on the part of the defendant was: That according to the evidence in the cause, the United Provinces of Rio de la Plata is, and was at the time of the offense alleged in the indictment, a government acknowledged by the United States, and thus was a *state* and not a *people* within the meaning of the act of Congress under which the defendant is indicted; the word *people* in that act being intended to describe communities under an existing government not recognized by the United States; and that the indictment therefore cannot be supported on this evidence.

"The indictment charges that the defendant was concerned in

fitting out the Bolivar with the intent that she should be employed in the service of a foreign *people*; that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence, that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation by the Executive Department of the Government of the United States, before the year 1827. And therefore it is argued that the word *people* is not properly applicable to that nation or power.

"The objection is one purely technical, and we think not well founded. The word *people*, as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of Congress to a foreign power. The words are, 'in the service of any foreign prince or state, or of any colony, district, or *people*.' The application of the word people is rendered sufficiently certain by what follows under the videlicet, 'that is to say, the United Provinces of Rio de la Plata.' This particularizes that which by the word *people* is left too general. The descriptions are no way repugnant or inconsistent with each other, and may well stand together. That which comes under the videlicet, only serves to explain what is doubtful and obscure in the word *people*."

All that was decided was that any obscurity in the word "people" as applied to a recognized government was cured by the videlicet."

Nesbitt *v.* Lushington, 4 T. R. 783, was an action on a policy of insurance in the usual form, and among the perils insured against were "pirates, rovers, thieves," and "arrestes, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever." The vessel with a cargo of corn was driven into a port and was seized by a mob who assumed the government of her and forced the captain to sell the corn at a low price. It was ruled that this was a loss by pirates, and the maxim *Noscitur a sociis* was applied by Lord Kenyon and Mr. Justice Buller. Mr. Justice Buller said: "'People' means 'the supreme power;' 'the power of the country,' whatever it may be. This appears clear from another part of the policy; for where the underwriters insure against the wrongful acts of individuals, they describe them by the names of 'pirates, rogues, thieves;' then having stated all the individual persons, against whose acts they engage, they mention other risks, those occasioned by the acts of 'kings, princes, and *people* of what nation, condition, or quality soever.' Those words therefore must apply to 'nations' in their collective capacity."

As remarked in the brief of Messrs. Richard H. Dana, Jr., and Horace Gray, Jr., filed by Mr. Cushing in Mauran *v.* Insurance Co., 6 Wall 1, the words were "doubtless originally inserted with the view of enumerating all possible forms of government, monarchical, aristocratical, and democratic."

The British Foreign Enlistment Act, 59 Geo. III, c. 69, was bot-

tomed on the act of 1818, and the seventh section, the opening portion of which is given below,* corresponded to the third section of that act. Its terms were, however, considerably broader and left less to construction. But we think the words "colony, district, or people" must be treated as equally comprehensive in their bearing here.

In the case of The Salvador, L. R. 3 P. C. 218, the Salvador had been seized under warrant of the Governor of the Bahama Islands and proceeded against in the Vice Admiralty Court there for breach of that section, and was, upon the hearing of the cause, ordered to be restored, the court not being satisfied that the vessel was engaged, within the meaning of the section, in aiding parties in insurrection against a foreign government, as such parties did not assume to exercise the powers of government over any portion of the territory of such government. This decision was overruled on appeal by the Judicial Committee of the Privy Council, and Lord Cairns, delivering the opinion, said: "It is to be observed that this part of the section is in the alternative. The ship may be employed in the service of a foreign prince, state, or potentate, or foreign state, colony, province, or part of any province or people; that is to say, if you find any consolidated body in the foreign state, whether it be the potentate, who has the absolute dominion, or the Government, or a part of the province or of the people, or the whole of the province or the people acting for themselves, that is sufficient. But by way of alternative it is suggested that there may be a case where, although you cannot say that the province, or the people, or a part of the province or people are employing the ship, there yet may be some person or persons who may be exercising, or assuming to exercise, powers of government in the foreign colony or state, drawing the whole of the material aid for the hostile proceedings from

* "That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out or arm, or attempt or endeavor to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out or arming of any Ship or Vessel with intent or in order that such Ship or Vessel shall be employed in the service of any Foreign Prince, State or Potentate, or of any Foreign Colony, Province or part of any Province or People, or of any Person or Persons exercising or assuming to exercise any powers of Government in or over any Foreign State, Colony, Province or part of any Province or People, as a Transport or Storeship, or with intent to cruise or commit hostilities against any Prince, State or Potentate, or against the subjects or citizens of any Prince, State or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province or part of any Province or Country, or against the inhabitants of any Foreign Colony, Province or part of any Province or Country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, Territory, Island or place belonging or subject to His Majesty, issue or deliver any Commission for any Ship or Vessel, to the intent that such Ship or Vessel shall be employed as aforesaid," &c., &c.

abroad; and, therefore, by way of alternative, it is stated to be sufficient, if you find the ship prepared or acting in the service of 'any person or persons exercising, or assuming to exercise, any powers of Government in or over any foreign state, colony, province, or part of any Province or people;' but that alternative need not be resorted to, if you find the ship is fitted out and armed for the purpose of being 'employed in the service of any foreign state or people, or part of any province or people.' . . .

"It may be (it is not necessary to decide whether it is or not) that you could not state who were the person or persons, or that there were any person or persons exercising, or assuming to exercise, powers of government in Cuba, in opposition to the Spanish authorities. That may be so: their Lordships express no opinion upon that subject, but they will assume that there might be a difficulty in bringing the case within that second alternative of the section; but their Lordships are clearly of opinion, that there is no difficulty in bringing the case under the first alternative of the section, because their Lordships find these propositions established beyond all doubt,—there was an insurrection in the island of Cuba; there were insurgents who had formed themselves into a body of people acting together, undertaking and conducting hostilities; these insurgents, beyond all doubt, formed part of the province or people of Cuba; and beyond all doubt the ship in question was to be employed, and was employed, in connection with and in the service of this body of insurgents."

We regard these observations as entirely apposite, and while the word "people" may mean the entire body of the inhabitants of a state; or the state or nation collectively in its political capacity; or the ruling power of the country; its meaning in this branch of the section, taken in connection with the words "colony" and "district," covers in our judgment any insurgent or insurrectionary "body of people acting together, undertaking and conducting hostilities," although its belligerency has not been recognized. Nor is this view otherwise than confirmed by the use made of the same words in the succeeding part of the sentence, for they are there employed in another connection, that is, in relation to the cruising, or the commission of hostilities, "against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace;" and, as thus used, are affected by obviously different considerations. If the necessity of recognition in respect of the objects of hostilities, by sea or land, were conceded, that would not involve the concession of such necessity in respect of those for whose service the vessel is fitted out.

Any other conclusion rests on the unreasonable assumption that the act is to remain ineffectual unless the government incurs the

restraints and liabilities incident to an acknowledgment of belligerency. On the one hand, pecuniary demands, reprisals, or even war, may be the consequence of failure in the performance of obligations towards a friendly power, while on the other, the recognition of belligerency involves the rights of blockade, visitation, search and seizure of contraband articles on the high seas and abandonment of claims for reparation on account of damages suffered by our citizens from the prevalence of warfare.

No intention to circumscribe the means of avoiding the one by imposing as a condition the acceptance of the contingencies of the other can be imputed.

Belligerency is recognized when a political struggle has attained a certain magnitude and affects the interests of the recognizing power; and in the instance of maritime operations, recognition may be compelled, or the vessels of the insurgents, if molesting third parties, may be pursued as pirates. The Ambrose Light, 25 Fed. Rep. 408; 3 Whart. Dig. Int. Law, Sec. 381; and authorities cited.

But it belongs to the political department to determine when belligerency shall be recognized, and its action must be accepted according to the terms and intention expressed.

The distinction between recognition of belligerency and recognition of a condition of political revolt, between recognition of the existence of war in a material sense and of war in a legal sense, is sharply illustrated by the case before us. For here the political department has not recognized the existence of a *de facto* belligerent power engaged in hostility with Spain, but has recognized the existence of insurrectionary warfare prevailing before, at the time, and since, this forfeiture is alleged to have been incurred.

On June 12, 1895, a formal proclamation was issued by the President and countersigned by the Secretary of State, informing the people of the United States that the island of Cuba was "the seat of serious civil disturbances accompanied by armed resistance to the authority of the established government of Spain, a power with which the United States are and desire to remain on terms of peace and amity;" declaring that "the laws of the United States prohibit their citizens, as well as all others being within and subject to their jurisdiction, from taking part in such disturbances adversely to such established government, by accepting or exercising commissions for warlike service against it, by enlistment or procuring others to enlist for such service, by fitting out or arming or procuring to be fitted out and armed ships of war for such service, by augmenting the force of any ship of war engaged in such service and arriving in a port of the United States, and by setting on foot or providing or preparing the means for military enterprises to be carried on from the United States against the territory of such government;" and admonishing all such citizens and other persons to abstain from any violation of these laws.

In his annual message of December 2, 1895, the President said: "Cuba is again gravely disturbed. An insurrection, in some respects more active than the last preceding revolt, which continued from 1868 to 1878, now exists in a large part of the eastern interior of the island, menacing even some populations on the coast. Besides deranging the commercial exchanges of the island, of which our country takes the predominant share, this flagrant condition of hostilities, by arousing sentimental sympathy and inciting adventurous support among our people, has entailed earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty.

"Whatever may be the traditional sympathy of our countrymen as individuals with a people who seem to be struggling for larger autonomy and greater freedom, deepened as such sympathy naturally must be in behalf of our neighbors, yet the plain duty of their Government is to observe in good faith the recognized obligations of international relationship. The performance of this duty should not be made more difficult by a disregard on the part of our citizens of the obligations growing out of their allegiance to their country, which should restrain them from violating as individuals the neutrality which the nation of which they are members is bound to observe in its relations to friendly sovereign States. Though neither the warmth of our people's sympathy with the Cuban insurgents, nor our loss and material damage consequent upon the futile endeavors thus far made to restore peace and order, nor any shock our humane sensibilities may have received from the cruelties which appear to especially characterize this sanguinary and fiercely conducted war, have in the least shaken the determination of the Government to honestly fulfil every international obligation, yet it is to be earnestly hoped, on every ground, that the devastation of armed conflict may speedily be stayed and order and quiet restored to the distracted island, bringing in their train the activity and thrift of peaceful pursuits."

July 27, 1896, a further proclamation was promulgated, and in the annual message of December 7, 1896, the President called attention to the fact that "the insurrection in Cuba still continues with all its perplexities," and gave an extended review of the situation.

We are thus judicially informed of the existence of an actual conflict of arms in resistance of the authority of a government with which the United States are on terms of peace and amity although acknowledgement of the insurgents as belligerents by the political department has not taken place; and it cannot be doubted that, this being so, the act in question is applicable.

We see no justification for importing into section 5283 words

which it does not contain and which would make its operation depend upon the recognition of belligerency; and while the libel might have been drawn with somewhat greater precision, we are of opinion that it should not have been dismissed.

This conclusion brings us to consider whether the vessel ought to have been released on bond and stipulation.

It is provided by section 938 of the Revised Statutes that—

"Upon the prayer of any claimant to the court, that any vessel, goods, wares, or merchandise, seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed, &c. . . . If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States, &c., . . . the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant. . . ."

Section 939 provides for the sale of vessels "condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bond shall not have been given by the claimant. . . ."

Section 940 authorizes the judges to do in vacation everything that they could do in term time in regard to bonding and sales, and to "exercise every other incidental power necessary to the complete execution of the authority herein granted."

Section 941 provides:

"When a warrant of arrest or other process *in rem* is issued in any cause of admiralty jurisdiction, except the cases of seizure for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge, &c. . . ."

By Section 917 this court may prescribe rules of practice in admiralty "in any manner not inconsistent with any law of the United States."

Rule 10, as thus prescribed, provides for the sale of perishable articles or their delivery upon security to "abide by and pay the money awarded by the final decree."

Rule 11 is as follows:

"In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court, upon the

claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned."

In The Mary N. Hogan, 17 Fed. Rep. 813, Judge Brown, of the Southern District of New York, refused to deliver the vessel on stipulation, and referring to Rule 11, said that it was not in form imperative in all cases, but left to the court a discretion which might be rightly exercised under peculiar circumstances; and that the rule clearly should not be applied where the object of the suit was "not the enforcement of any money demand, nor to secure any payment of damages, but to take possession of and forfeit the vessel herself in order to prevent her departure upon an unlawful expedition in violation of the neutrality laws of the United States." And he added: "It is clearly not the intention of Section 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a hostile expedition against a friendly power, which might entail a hundredfold greater liabilities on the part of the Government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of section 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself. The Government is, therefore, entitled to retain her in custody, and Rule 11 cannot be properly applied to such a case."

In The Alligator, 1 Gall. 145 (decided in 1812), Mr. Justice Story referred to an invariable practice in all proper cases of seizure, to take bonds for the property whenever application was made by the claimant for the purpose, but that was a case where the claimant had been allowed to give bond without objection and was attempting to avoid payment by alleging its irregularity; and in The Struggle, 1 Gall. 476 (1813), the same eminent judge, in making a similar ruling, said: "That where the claimant voluntarily accepts a delivery on bail, it is an estoppel of his right to contest the validity of the security."

But in section 941 of the Revised Statutes the exception was introduced of "cases of seizure for forfeiture under any law of the United States." And it seems obvious that the release on bond of a vessel charged with liability to forfeiture under section 5283, before answer or hearing, and against the objection of the United States, could not have been contemplated. However, as this applica ion was not based upon absolute right, but addressed to the sound discretion of the court, it is enough to hold that, under the

circumstances of this case, the vessel should not have been released as it was, and should be recalled on the ground that the order of release was improvidently made, United States *v.* Ames, 99 U. S. 39, 41, 43. If the vessel is held without probable cause her owners can recover demurrage, and, moreover, vessels so situated are frequently allowed to pursue their ordinary avocations while in custody pending suit, under proper supervision, and in order to prevent hardship.

The decree must be reversed and the cause remanded to the District Court with directions to resume custody of the vessel and proceed with the case in conformity with this opinion.

Ordered accordingly.

True copy. Test:
(SEAL.)

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

APPENDIX.

UNITED STATES VS. STEAM TUG MARY N. HOGAN.

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

Of July Term in the year 1883.

Before the Honorable ADDISON BROWN, District Judge.

On the 20th day of July, 1883, comes Elihu Root, Attorney of the United States for the Southern District of New York, who prosecutes here for the United States in its behalf in a cause of seizure and forfeiture, civil and maritime, in which the said United States are concerned and informs the court.

That the United States brings suit herein against a certain vessel, the steam-tug Mary N. Hogen, her tackle, apparel and furniture together with all material, arms, ammunition and stores which may have been procured for the building and equipment thereof, for breach of the neutrality laws of the United States and alleges as follows:

First. That the said vessel is now lying at the port of New York in waters navigable from the sea, by vessels of the burden of ten tons and upwards, within the Southern District of New York and within the jurisdiction of this court and is ready to sail for certain places to the said attorney of the United States unknown with intent (in the service of a district and people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organised and recognized Government of the Republic of Hayti) to cruise and carry on hostilities against the subjects, citizens and property of the Republic of Hayti with which the United States are at peace.

Second. That the said vessel on or about the 15th day of July, 1883, within the limits of the United States and of the Southern District of New York and within the jurisdiction of this court, was fitted out and armed by certain persons to said attorney unknown, with the intent that such vessel should be employed in the service of a certain people and district of the Island of Hayti (to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti), to cruise and carry on hostilities against the subjects, citizens and property of the Republic of Hayti with which the United States are at peace.

Third. That on or about the 15th day of July, 1883, within the Southern District of New York and within the limits of the United States and within the jurisdiction of this court, certain persons to said attorney unknown, were knowingly concerned in the furnishing and fitting out of said vessel, with intent that said vessel should be employed in the service of a certain district and people foreign to the United States in the Island of Hayti, to wit, certain rebels

who are and then were in a state of insurrection against the organized and recognized government of the Island of Hayti, to cruise and carry on hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States are at peace.

Fourth. That the said vessel was, on or about the 15th day of July, 1883, within the limits of the United States, to wit, at the Southern District of New York aforesaid, furnished, fitted out or armed by certain persons to the said attorney unknown with the intent of which said unknown persons had knowledge; that said vessel should be employed in the service of a foreign people, to wit, a portion of the people of the Island of Hayti, to cruise or commit hostilities against the subjects, citizens or property of the Republic of Hayti, with which the United States are at peace.

Fifth. That all and singular the matters hereinbefore, firstly, secondly, thirdly, fourthly, articulated, are contrary to the Section 5283 of the Revised Statutes of the United States.

That by reason of the premises and by virtue of the said section the said vessel, the steamtug Mary N. Hogen, her tackle, etc., her arms, etc., became forfeited.

That all and singular the premises aforesaid, are and were true, and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore the said attorney of the United States on behalf of the United States prays the usual process and monition of this Honorable Court against the said vessel, the Mary N. Hogen and her tackle, apparel, furniture, arms, and ammunition in this behalf to be made, and that all persons interested in such vessel and her tackle, apparel, furniture, arms, and ammunition aforesaid, may be cited to answer the premises, and that all due proceedings being had thereon this Honorable Court may be pleased to decree for the forfeiture aforesaid, and that the said vessel, the Mary N. Hogen and her tackle, etc., and arms, stores, etc., may be condemned as forfeited, according to statute and the acts of Congress in that behalf provided.

(Signed) ELIHU ROOT,
U. S. Attorney.

Endorsed Libel.
Filed July 20, 1883.

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

THE UNITED STATES OF AMERICA
vs.
THE STEAM-TUG "MARY N. HOGEN"
HER TACKLE, &c.

Amended Libel of Information.

And upon the 6th day of August, A. D. 1883, comes Elihu Root, Attorney of the United States of America for the Southern District of New York, who prosecutes here for the said United States of America, in its behalf, a cause of forfeiture, civil and maritime, in which the said United States of America is concerned, and informs this Honorable Court:

That the United States of America brings suit herein against a certain vessel, the steam-tug "Mary N. Hogen," her tackle, apparel and furniture, for breach of the neutrality and navigation laws of the said United States of America, and alleges:

First. That the said vessel is now lying at the port of New York, in waters navigable from the sea by vessels of the burden of ten tons and upwards, within the Southern District of New York, and within the jurisdiction of this court, and is ready to sail for certain places, to the said attorney of the United States of America unknown, with the intent (in the service of a district and people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti) to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America is at peace.

Second. That the said vessel, on or about the 15th day of July, A. D. 1883, within the limits of the United States of America and the Southern District of New York, and within the jurisdiction of this court, was fitted out and armed by certain persons to said attorney of the United States of America unknown, with the intent that such vessel should be employed in the service of a certain people and district of the Island of Hayti (to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti), to cruise or commit hostilities against the subjects, citizens, and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Third. That on or about the 15th day of July, A. D. 1883, within the Southern District of New York and within the limits of the United States of America, and within the jurisdiction of this court,

certain persons, to the said attorney of the said United States of America unknown, were knowingly concerned in the furnishing and fitting out of said vessel, with intent that the said vessel should be employed (in the service of a certain district and people, foreign to the United States of America, in the Island of Hayti, to wit, certain rebels who are and then were in a state of insurrection against the organized and recognized government of the Republic of Hayti), to cruise and commit hostilities against the subjects, citizens, and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Fourth. That the said vessel was, on or about the 15th day of July, A. D. 1883, within the limits of the United States of America, to wit, at the Southern District of New York aforesaid, furnished, fitted out, or armed, by certain persons, to the said attorney of the United States of America unknown, with the intent, of which the said unknown persons had knowledge, that said vessel should be employed in the service of a foreign people, to wit, a portion of the people of the Island of Hayti, to cruise or commit hostilities against the subjects, citizens or property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Fifth. That on or about the 15th day of July, A. D. 1883, within the limits of the United States of America, at the Southern District of New York, certain persons, to the said attorney of the United States of America unknown, attempted to fit out and arm the said vessel, with intent that such vessel should be employed in the service of a foreign people, to wit, a portion of the people of the Island of Hayti, to cruise or commit hostilities against the subjects, citizens or property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Sixth. That all and singular the matters hereinbefore, firstly, secondly, thirdly, fourthly, fifthly, articulated are contrary to Section 5283 of the Revised Statutes of the United States of America:

That by reason of the premises and by virtue of the said section, the said vessel, the steam-tug "Mary N. Hogen," her tackle, &c., her arms, &c., became forfeited.

Seventh. That at the times in this article specified, the said vessel, the steam-tug "Mary N. Hogen," was not entitled to the benefit of the Certificate of Registry in the article referred to, in that such vessel did not belong wholly to a citizen or citizens of the United States; that on or about the 25th day of June, 1883, a certificate of registry of said vessel was obtained from the collector of the port of New York and collection district of New York by one John H. McCarthy (who was master and in possession of said vessel and claimed to be the owner thereof), knowingly and fraudulently, by means of an oath in writing by said McCarthy taken and subscribed, in order to the registry of said vessel, before a deputy of said collector, in which oath, said McCarthy stated that

he was the sole owner of said vessel, whereas, to his knowledge, the fact was that he was not the sole owner thereof; and in which said McCarthy further stated that there was no subject or citizen of any foreign prince or state, directly, or indirectly, by way of trust, confidence, or otherwise, interested in said vessel, whereas, to his said McCarthy's knowledge, the fact was, that a subject or citizen of a foreign prince or state was interested by way of confidence, trust, or otherwise, in said vessel.

Whereby and by force of Section 4189 of the Revised Statutes of the United States of America, the said vessel, the steam-tug "Mary N. Hogen," with her tackle, apparel and furniture became liable to forfeiture.

Eighth. That all and singular the premises are and were true and within the admiralty and maritime jurisdiction of the United States of America and this Honorable Court.

Wherefore the said Attorney of the United States of America prays the usual process and monition of this Honorable Court against the said vessel, the "Mary N. Hogen," and her tackle, apparel, furniture, arms and ammunition, in this behalf to be made, and that all persons interested in such vessel and her tackle, apparel, furniture, arms and ammunition aforesaid, may be cited to answer the premises, and that all due proceedings being had thereon, this Honorable Court may be pleased to decree for the forfeiture aforesaid and that the said vessel, the "Mary N. Hogen," and her tackle, etc., and arms, stores, etc., may be condemned as forfeited according to the statutes and acts of Congress in that behalf provided.

(Signed) ELIHU ROOT,
U. S. Attorney.

Endorsed amended libel of information.
Filed August 6, 1883.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the United States court room in the City of New York on the twenty-eighth day of November, in the year 1883.

Present: The Honorable Addison Brown, District Judge.

THE UNITED STATES OF AMERICA
against
THE STEAMTUG "MARY N. HOGAN" HER TACKLE, APPAREL, FURNITURE, &C.

This cause having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the prem-

ises, and notwithstanding the objection and protest of the parties, defenders and claimants by their counsel, in open court, that the defence possessed the right by law to send the said steamtug to Jamaica for the purpose of raising the wreck of the Calvert, and thereafter to sell and transfer her to any purchaser as an article of merchandise notwithstanding the provisions of the Act of Congress counted upon in the said Libel of Information, and the case aforesaid having been heard upon the pleadings and proofs and upon the arguments of the advocates for the respective parties, and after due consideration thereof.

It is ordered, adjudged, and decreed that the said steamtug "Mary N. Hogan" her tackle, apparel, and furniture be and the same hereby are condemned as forfeited to the United States, and it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the clerk of this court issue a write of venditioni exponas directed to the marshal of the district for the sale of said steamtug "Mary N. Hogan" her tackle, apparel, and furniture with all the material and stores belonging thereto and the proceeds of such sale to be paid into court and distributed according to law unless in the meantime the same shall be admitted to bail by order of the court, and, that the costs of the plaintiff including stenographer's fees, amounting in all to two thousand four hundred and fifty dollars and sixteen cents as taxed, be paid out of such proceeds.

ADDISON BROWN.

Endorsed Final Decree.
Filed Nov'r 28, 1883.

UNITED STATES v. THE MARY N. HOGAN. 17 FEDERAL REPORTER, p. 813.

(*August 10, 1883. District Court of U. S., Southern District of New York.*)

In Admiralty.

BROWN, J. The steam-tug Mary N. Hogan being in the custody of the marshal, under arrest upon process issued for her forfeiture to the United States, application is made in behalf of John H. McCarthy, her alleged owner, for the appointment of appraisers to determine her value, preliminary to giving bond for her release from custody. The application is opposed by the district attorney on the ground that the claimant is not, in this case, entitled to bond the vessel. The proceedings for the forfeiture of the vessel are instituted under Sections 5283 and 4189 of the Revised Statutes. The

former section subjects to forfeiture any vessel "furnished, fitted out or armed within the limits of the United States with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace." The libel charges that the Mary N. Hogan, on or about the fifteenth of July, 1883, was furnished, fitted out, or armed within this district, with the intent that she should be employed in the service of certain rebels in the island of Hayti, to cruise or commit hostilities against the subjects, citizens, or property of the island of Hayti, with which the United States are at peace.

By section 4189, also, every vessel is made liable to forfeiture whose certificate of registry "is knowing and fraudulently obtained;" and the libel charges that John H. McCarthy, on or about the fifteenth day of July, 1883, knowingly and fraudulently procured the registry of said vessel in his name as sole owner, upon oath that there was no subject or citizen of any foreign prince or state directly or indirectly interested in her, whereas, in fact, a foreign citizen was part owner.

The proceedings for the forfeiture of the vessel are proceedings in admiralty, and governed by the admiralty rules. The appointment of appraisers and the bonding of the vessel are claimed under rule 11 of the Supreme Court rules in admiralty, which provides that "where any ship shall be arrested, the same *may*, upon the application of the claimant, be delivered to him upon due appraisement to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving stipulation with sureties," etc.

In the great majority of cases suits are brought, and the arrest of the vessel is made, for the purpose only of securing payment of some pecuniary demand. In such cases the object of the suit will be fully secured by permitting a good bond, with sureties, to be substituted as security in place of the vessel during the pendency of the litigation; and thereby not only is the great expense of keeping the vessel in custody for a considerable period avoided, but the vessel is also allowed in the meantime to be engaged in the pursuits of commerce. Rule 11 is clearly designed for this purpose. It is not in form imperative in all cases of the arrest of vessels, but provides only that the vessel "*may*" be delivered, etc.; thus leaving to the court a discretion which may be rightly exercised under peculiar circumstances; and, as it seems to me, the rule clearly should not be applied in those cases where the object of the suit is not the enforcement of any money demand, nor to secure any payment of damages, but to take possession of and forfeit the vessel herself, in order to prevent her departure upon an unlawful expedition, in

violation of the neutrality laws of the United States. Such, by the statements of the libel, appears to be the sole object of this suit; and to permit the vessel, as soon as arrested, to be bonded by the very persons alleged to be engaged in this unlawful expedition, and bonded presumably for the purpose of immediately prosecuting it, would be to facilitate in the most direct manner the unlawful expedition, and would practically defeat the whole object of the suit, and render the government powerless by legal proceedings to prevent the violation of its international obligations.

No section of the statutes other than section 5283 fully meets the circumstances of this case. That section is rightly invoked to enable the government to preserve itself from large possible liabilities through a violation of its treaty obligations to Hayti. It is clearly not the intention of section 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a hostile expedition against a friendly power, which might entail a hundred-fold greater liabilities on the part of the government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of section 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself. The government is, therefore, entitled to retain her in custody, and rule 11 cannot be properly applied to such a case.

Upon the papers submitted it appears that the proceedings are promoted at the instance of responsible officers of the Haytian government; and there is no evidence before me tending to show that the proceedings are in bad faith, or malicious, or on insufficient *prima facie* grounds; and the application for appraisers for the purpose of bonding should, therefore, be denied.

As the vessel is in custody, either party, under the rules of the court, is entitled to an immediate trial. No term for the trial of calendar causes being in session at this time, upon the consent of the United States attorney, already given in open court, the claimant upon filing his answer to the libel, may have an immediate order of reference to the clerk to take the testimony in the cause; and when completed the case may be submitted, and will be at once disposed of.

UNITED STATES vs. THE MARY N. HOGAN. 18 FEDERAL REPORTER, 529.

(*November 23, 1883. District Court of the U. S., Southern District of New York.*)

Information for Violation of Neutrality Laws.

ELIHU ROOT, Dist. Atty., for the United States.

GEORGE H. FORSTER, for claimant.

Brown, J. On the twentieth day of July, 1883, the steam-tug Mary N. Hogan was seized at this port by order of the collector. The information in this case was thereupon filed to procure her condemnation, upon two grounds: *First*, for violation of section 5283 of the Revised Statutes, in being fitted out with the intent that she should be employed to commit hostilities against the recognized government of Hayti; and, *second*, for a violation of section 4189, 4142, in being knowingly and fraudulently registered in the name of John H. McCarthy, under a false oath that no subject or citizen of any foreign prince or state was directly or indirectly interested in the vessel. The Mary N. Hogan was a steam-tug of about 37 tons register, 90 feet long, 20 feet beam, and 9 feet depth of hold, built for ordinary towing service about the harbor of New York, and in no respect distinguishable by any peculiarities from the numerous other tugs of her class in this port. Her draught, loaded, was about 9 feet, and her full speed, when in good order, 10 to 11 knots. When seized on the twentieth of July she was nearly ready for sea, it having been given out that she was to proceed to Port Antonio, Jamaica, for the purpose of assisting in raising the steamer Calvert, which had been sunk in that harbor by a collision. At the time of seizure she had all her coal on board for the voyage. She had previously received some repairs, none of a very important character, the chief of which were replacing a somewhat decayed beam by a new one, and the addition of a keel condenser for the purpose of obtaining fresh water on the voyage. Several examinations by experts on behalf of the government previous to the seizure failed to discover any repairs or preparations indicating any intended service in military or naval operations. No arms, ammunition or other warlike appliances were on board. From the evidence it clearly appears that though the Hogan was wholly unadapted to effective naval operations against any considerable organized opposition, she could be of the greatest service to the insurgents by her light draught and considerable speed in landing or taking off men at unprotected points on the coast of Hayti by watching her opportunities of running in and out, as well as in offensive demonstrations against defenseless parts of the island, with little to fear from the slight naval resources of the lawful government. U. S. v. Rand, 17 Fed. Rep. 142.

The facts upon which the prosecution relies are mainly as follows:

Since March, 1883, an insurrection has been in progress in Hayti by armed insurgents at war with the pre-existing government, which had been and still is alone recognized in this country as the lawful government of that island. The insurrection originated at the port of Miragoane, through an expedition which started from Philadelphia on March 15, 1883, upon the steamer Tropic, with arms and ammunition, nominally bound for Kingston, Jamaica. The Tropic did not go to Kingston, but went to the island of Inagua, about 30 miles from Hayti, where she took on board Gen. Boyer Bazelais, the recognized leader of the rebellion, with 75 or 100 armed men, and about the same number afterwards from an English steamer at sea, and then proceeded to the port of Miragoane, where Gen. Bazelais, with all the men, arms, and ammunition were landed about daybreak, and the insurrection successfully inaugurated. Bazelais, before leaving Jamaica, had supplied one Simon Soutar, a merchant of Kingston, who was interested in the Haytian insurrection, with money for the purpose of purchasing arms and ammunition. The arms and ammunition which went out upon the Tropic were purchased in New York by Henry A. Kearney, upon Soutar's order, from Joseph W Fraser, of this city, and were shipped by the latter to Philadelphia, and there shipped on board the Tropic by Kearney. See U. S. v. Rand, *supra*.

In June, 1883, Mr. Soutar came to this city. Acting in his behalf, Kearney entered upon negotiations for the purchase of a tug-boat, and on the twenty-third of June made a contract with one Moran for the purchase of the Hogan, at the price of $11,600. Prior to this time Soutar had been made acquainted with John H. McCarthy, a roving and adventurous navigator, experienced in blockade running, and made three times a prisoner during the war of the rebellion, who had served at Sebastopol and in the Mediterranean, and was familiar with the waters of the West Indies. Upon the purchase of the Hogan all the money was supplied by Soutar to Kearney, who paid it to Moran, while the contract of purchase and the bill of sale of the vessel were taken in the name of McCarthy. On Monday, the twenty-fifth of June, the register of the vessel was made in the custom-house in the name of McCarthy, upon a bill of sale delivered to him at that time, and McCarthy at the same time executed a bill of sale from himself to Philip William Abbott, a resident of Kingston, Jamaica, also interested in the Haytian insurrection, and described by McCarthy as the partner of Soutar. At the time of the registry of the vessel in the name of McCarthy, he made oath that "no citizen or subject of any foreign state or prince was interested in the vessel directly or indirectly." The bill of sale to Abbott was never registered. McCarthy testifies that he supposed it to be a mortgage; that he understood previously

that he was to take the title of the Hogan and execute a mortgage back for the full price; that he did not expect to pay for the vessel in any other way than by the mortgage. McCarthy states that he was engaged to act as captain of the tug, to assist in raising the Calvert at Port Antonio, and to do towing around the island, for which he was to receive $125 per month. After the purchase of the Hogan, McCarthy went into possession as captain, took her to Astoria, where the repairs above mentioned were made, and afterwards obtained a supply of coal at Hoboken, whence he returned to pier 28, East River, to take in additional stores preparatory to departure upon his voyage. McCarthy procured seamen and engineers for the voyage; but all the bills, with unimportant exceptions, were paid by Kearney, with money supplied by Soutar, and Kearney had the general direction and supervision of the Hogan in this port.

While these preparations on the Hogan were in progress, Soutar purchased from Fraser various arms and ammunition, to the value of $7,000, including rifles, a twenty-pound army Parrot gun, a three-inch Parrot gun, and two field carriages. They were in part shipped by Fraser at pier 28, East river, on board the schooner E. G. Erwin, which cleared for Richmond and sailed on July 18th, two days before the seizure of the Hogan. The rest of the arms, being left behind through the Erwin's sailing earlier than Fraser had expected, were forwarded by rail and taken on board the Erwin at Lewes, Delaware. The shipment of the arms on board the schooner Erwin was arranged by one George W. Brown, a ship-broker, at the request of Kearney, who knew Brown to have been previously successful in arranging for the shipment of warlike material to the Cuban insurgents. Brown prepared private signals and instructions for the captain of the Erwin, to the effect that the arms and ammunition in question should be transferred in the vicinity of Hog Island, Hampton Roads, to a steamer which would meet him there and give the signals agreed on, and that the arms and ammunition should be delivered on presentation of the schooner's receipts and payment of his charges. A copy of these instructions and signals was given to Kearney. The Hogan was seized on the 20th. No vessel met the schooner near Hog Island or Hampton Roads, as was designed and the Erwin, after cruising several days in that vicinity, and finding no vessel to answer the concerted signals, went on her way to Richmond, for which place she had other goods. Shortly afterwards the arms and ammunition purchased by Soutar were seized by the federal authorities at Richmond; but before this was known to Kearney he had told Brown that no vessel had met the Erwin in Hampton Roads; that she had taken the arms to Richmond; and that he desired Brown to arrange for their transport to the West Indies. Brown thereupon made partial arrangements, at Kearney's request, to take the arms and ammunition to the Island

of Navassa, a small guano island, without harbor or ordinary habitations, between Jamaica and Hayti, and about 40 miles from the latter. Intelligence of the seizure of the arms at Richmond put an end to further negotiations on that subject.

Four witnesses gave direct testimony of the statements of McCarthy as to the destination of the Hogan. McCormick, a constable of Brooklyn, testified that McCarthy told him that he expected to clear the next Wednesday for Hayti, and that he expected to take two guns aboard on the way. Mary Costigan testified that McCarthy engaged her husband for first engineer, and also to serve as a gunner, in which capacity he had previously served, and that he said he was going to Miragoane, Hayti. Her husband and one Cox testified that McCarthy said they were going to fight Hayti, and would take in arms on the way.

The claimant gave no evidence touching the destination of the arms and ammunition purchased of Fraser; and, as regards the destination of the Hogan, he relied solely upon the statement made to various persons in the course of the negotiations for the purchase of the Hogan, and on the testimony of Capt. McCarthy that she was designed to go to Port Antonio for the purpose of raising the wreck of the Calvert. Neither the claimant Abbott nor Soutar appeared as witnesses, nor was their testimony taken by commission.

A letter from Soutar to Kearney, dated July 3, 1883, was introduced in evidence, the material parts of which are as follows:

"Soutar & Co.
"Address for Telegrams,
"Soutar, Jamaica.

"KINGSTON, 3d July, 1883.
"Jamaica.

"H. A. KEARNEY, Esq., 1400 *Sixth Avenue, New York.*

"DEAR SIR: The writer duly arrived on Friday, and we are now anxiously waiting advices from you, as we expected everything would have been ready and dispatched ere this. We telegraphed you yesterday, 'Salaried standard, Calvert's matter,' but up to present, 1 P. M., have no reply. We should like the Calvert's matter put in hand as early as possible. If you have already procured two schrs., long 3-masters, of from 300 to 350 tons register, then get made at Perry & Jones', Wilmington, Del., or at any of the machine shops, 4 4-inch screws about 12 feet long, with a square thread of 3-8 of an inch, and 5-8 deep, with a lever of 8 feet long. * * * See that everything is completed and despatched as early as possible. * * * Captain Edwards, whom the writer saw at B. I. Werberg's asked $1,000 a month for 320-ton schooners, but would take less. * * * We think the plan of raising her with screws the best, and would like to get under way as soon as possible. If you can get letters out to us by Warner & Merritt's steamers, write us by that way as well as by mail, and perhaps Mr. Merritt may be able

to help you in getting the schooner or screws, or in some other way in the Calvert's matter. She has been lying under water too long already, and we are very anxious to get to work as early as possible. * * *"

The claimant also proved the purchase by Soutar of the wreck of the Calvert for $500; that in July Kearney was negotiating in New York for the purchase or lease of two three-masted schooners, to be used in raising the Calvert, which, however, were not obtained here; that four beams and jack-screws, with chains, were in August shipped to Port Antonio, for the purpose of raising the Calvert; that the Erwin carried some arms and ammunition on the voyage above referred to, consigned, by way of Richmond, to *bona fide* purchasers in the interior; and that great alterations and strengthening would be necessary in the Hogan to make her fit for any considerable permanent naval operations, or for any successful contest with armed antagonists.

No testimony was offered by the claimant to show what vessel was expected to receive the arms and ammunition from the Erwin in Hampton Roads; nor was any explanation offered of the title of the vessel being first taken in the name of McCarthy and then by a secret bill of sale transferred to Abbott.

The only rational inference that can be drawn from the above facts is that the Hogan was designed to be used for the conveyance of arms and ammunition in aid of the insurrectionists in Hayti, and for other aid, and such hostile demonstrations as she was fit to make against the defenseless parts of the coast. The circumstantial evidence, together with the direct evidence of four witnesses, strongly sustains this conclusion; while the ostentible purpose of the Hogan's voyage has little that is natural, plausible, or probable to sustain it; and other circumstances, easy for the claimants to have explained if the Hogan was destined upon a legitimate business, are left wholly unexplained. Expeditions of this character are highly penal. Vessels cannot be fitted out or be cleared without more or less publicity. It is to be expected, therefore, in every case of such unlawful expeditions, that some pretext will be given out which must have connected with it some circumstances of reality to be of any value; and the question is necessarily presented whether the ostensible purpose of the voyage, more or less plausible, is the *bona fide* and sole object, or only a cover for departure upon a hostile expedition, as in the case of the Tropic.

All the circumstances in this case seem to me to show that the ostensible purpose for which the Hogan was going was a pretext, and not the real object of her voyage. While some direct evidence may not be wanting, yet for the most part cases of this sort must depend upon circumstantial evidence. In the *Slaver Cases*, 2 Wall. 401, the court say: "Ships of this description necessarily give rise

to a wide range of investigation, for the reason that the purpose of the voyage is directly involved in the issue. Experience shows that positive proof in such cases is not generally to be expected, and for that reason, among others, the law allows a resort to circumstances as the matters of ascertaining the truth. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof." So, in Judge BETTS' charge to the grand jury, as quoted in Wharton's Criminal Law, in relation to the neutrality act, he says:

"It must be manifest to you, gentlemen, that these criminal designs, if entertained, will be managed with much disguise and caution; it is not probable that soldiers will be openly enlisted, or officers commissioned, or vessels freighted to transport munitions of war or men to the field of action. Pretenses and coloring will be employed to mask the real object the parties to such criminal projects contemplate. But if you discover the purpose really to be to supply the means of hostile aggression against Cuba, then all persons connected with it, and promoting it, will be answerable for the violation of the laws of the United States in the undertaking, the same as if their proceedings had been openly and avowedly intended for a hostile invasion, and waging war on that community."

In the present case there are four lines or groups of evidence which all concur in the conclusion I have stated: (1) The circumstances connected with the simultaneous purchase by Soutar of a large quantity of arms and ammunition and of the Hogan, and their intended dispatch about the same time with the intended transhipment near Hog island; (2) the absence of explanations within the power of the claimant, if the expedition were legitimate and lawful; (3) the direct evidence inculpating the Hogan; and (4) the improbabilities that the purchase of the Hogan was simply to raise the wreck of the Calvert, as suggested.

1. Soutar was the agent of Bazelais, the leader of the insurrection in Hayti, and had enabled the latter successfully to inaugurate the revolt through an expedition which Soutar had organized in this country, with arms and ammunition purchased in New York and shipped to Philadelphia on the Tropic, under a false clearance for Kingston, in March, 1883. In June, three months afterwards, we find Soutar himself in this country again purchasing $7,000 worth of arms and ammunition, which subsequent events clearly prove were destined for the support of the insurrection in Hayti, and simultaneous therewith negotiating, through Kearney, for the purchase of a steam-tug, ostensibly to go to Port Antonio, Jamaica. These arms and ammunitions were shipped on board the schooner Erwin at pier 28, which cleared on the eighteenth of July, under secret instructions to transfer them at Hog island, near Hampton Roads, to a steamer which was to appear for them there, and receive

them on concerted signals. These instructions and signals were arranged at Kearney's request and communicated to him, and he also had the general superintendence of the fitting out of the Hogan for sea. Two days afterwards we find the Hogan at pier 28, on the eve of her departure, with all her coal on board, ostensibly bound for Jamaica, like the Tropic, and with only some few stores or provisions remaining to be taken aboard, and prepared to sail in time to reach the rendezvous near Hog island. The Hogan is seized on the 20th, and no steamer or other vessel meets the Erwin near Hog island, as carefully planned, though the Erwin cruises up and down for nearly a week, and the arms, contrary to design, are carried on to Richmond. The seizure of the Hogan has apparently disconcerted the carefully devised plans of Soutar and Kearney in the purchase of a large quantity of arms, and the simultaneous purchase and fitting out of the tug. These are at least circumstances of an extremely suspicious character, and if unexplained, when explanation is in the power of the claimant, they necessitate the inference that the Hogan was the vessel designed to receive the arms near Hog island for use against Hayti. *Slaver Cases*, 2 Wall. 350, 401; *Clifton* v. *U. S.*, 4 How. 242.

2. No explanations, however, are offered, either as to the purchase of this large quantity of arms and ammunition, or of the failure of any vessel to meet the Erwin at Hampton Roads. If these arms and ammunition, to the amount of $7,000 in value, had been destined for any other use than in aid of the Haytian insurrection, it would have been easy for the claimant to show it; and so as regards the vessel which was to meet the Erwin. The whole arrangement had been made at Kearney's request, and he received a copy of the instructions and signals as agent of Soutar, and could easily have shown that the Hogan was not the vessel intended to receive these arms, if such were the fact. If it were a vessel from a foreign port that was to meet the Erwin, that fact could have been shown without evidence of any violation of our law; while it is improbable in the last degree that Soutar and Kearney were at this very moment engaged in fitting out and sending from this country some other vessel than the Hogan, which does not appear in the case, to meet the Erwin at Hampton Roads. They were fitting out the Hogan; they had purchased her at the price of $11,600, and she was about to sail at the appropriate moment to meet the Erwin, according to instructions and concerted signals clearly proved; and the inference is irresistible, in the absence of all explanation, and of proof of any other vessel designed for that purpose, that the Hogan was the vessel designed for that rendezvous, and to proceed thence to assist the Haytian insurgents. These arms and ammunition weighed but 20 tons, scarcely more than the coal she would consume on her way to Hampton Roads, and they were easily within her power to take,

3. Four witnesses testified to the direct statements of Capt. McCarthy showing that the Hogan was being fitted out to aid the insurrection; that Cox and Costigan were wanted by Capt. McCarthy because they had had experience in the navy as gunners, although he refused to tell them the name of the vessel on which he desired to ship them, it being before the Hogan was actually purchased, but while negotiations were pending for the purpose of getting some steamer; and that he told them that the vessel was going to Miragoane; that there would be fighting there; and that arms were to be transferred to him on the way. Capt. McCarthy denies this statement; and it is urged that it is extremely improbable that he would make any such disclosures, even if true. But this argument is weakened by the fact which appeared in evidence, and which to some extent fell under the observation of the court, that Capt. McCarthy, besides apparently being usually voluble in conversation, became much more so when under the influence of liquor, to which he was occasionally addicted, so as not to be restrained by the ordinary considerations of prudence and caution. Some of the statements made by him, given in evidence, were made when under the influence of liquor; and for that reason the weight to be attached to them would be undoubtedly diminished; and though the general character of the four witnesses referred to is not of the highest credibility, still all this evidence falls in completely with the other circumstances of the case; and, as there is no impeachment of these witnesses, their testimony cannot be disregarded, but must be held as at least somewhat strengthening the conclusion to which all the circumstances point.

4. The improbabilities of the ostensible purpose of the Hogan, namely, to raise the wreck of the Calvert at Port Antonio, Jamaica, I do not question, upon the evidence, that Soutar had purchased this wreck for $500, and was proposing to raise it. The Hogan alone, would, however, be of no service in raising such a wreck. She was wholly unadapted for such a service, and incapable of doing it. The plan actually proposed for raising this wreck, as the evidence showed, was to procure two long three-masted schooners, to be placed one on each side of the wreck, with four beams running across, each furnished with a jack-screw and chains, by means of which the wreck should be raised. The Hogan might be made useful to some extent in merely towing the schooners into place, in towing away the wreck when raised, and serve as a convenient tender in the progress of the work; but there was no evidence that aid of a character so entirely subordinate could not be procured at Port Antonio from some other tugs at a comparatively trifling expense; and it would seem in the highest degree improbable that, for services so comparatively slight and subsidiary, Soutar should have expended $11,600 in the purchase of the tug Hogan. The Hogan, moreover, was equipped for sea long before

the other preparations for raising the wreck were made. Some negotiations for the hiring of schooners were entered into by Kearney here, but they failed, either the schooners or the price being unsatisfactory. By Soutar's letter to Kearney from Kingston, July 3rd, it appears that he arrived there from New York on the twenty-ninth of June from which it may be inferred that he left New York immediately after the purchase of the Hogan, and of the arms and ammunition above referred to. In this letter he desires that "Calvert's matter be put in hand as early as possible," and gives directions to have screws and beams made for use in that business if schooners are obtained. These beams or screws were not procured or shipped until August, nearly a month after the Hogan was ready to sail. It is manifest, therefore, that this voyage of the Hogan was long before there were any preparations for raising the Calvert, and could not have been intended for that purpose.

Again, had this been the real object of the Hogan, it is improbable that the case would have been left with such very loose and inadequate evidence of it. As it stands, the evidence consists only of McCarthy's statements of what Soutar told him, and of other casual statements in the course of the negotiations for the purchase of the Hogan. It is quite possible, and even probable, that it may have been designed to use the Hogan to assist in raising the Calvert when the other preparations were ready; so that the vague evidence of the kind referred to, though not false, is in no way incompatible with the primary and direct object of the voyage being to aid in the insurrection. If, moreover, the object of this voyage was a legitimate commercial venture, no reason appears why Soutar, having paid $11,000 for the Hogan, should have the title taken and registered in the name of Capt. McCarthy, and afterwards, by a secret bill of sale, transferred to his partner, Abbott. Nor are the character and antecedents of Capt. McCarthy such as would render it probable that he would be employed as the captain of a tug-boat to be used as a mere tender in raising the Calvert or in towing about the island; nor does the business of towing appear to form any part of Soutar's ordinary business.

The evident disguise and concealment under which the Hogan was purchased and her title taken and kept, the failure to exhibit by any direct or satisfactory proof any legitimate business at the time she was fitting out; the absence of all evidence from the parties immediately and most deeply interested, when their testimony might easily have been procured had her destination been a legitimate one; together with the strong circumstantial evidence above stated, sustained by the direct evidence of witnesses as good as could be expected to be employed in such an expedition, leave no doubt in my mind that the Hogan was fitted out for the purpose of receiving, near Hampton Roads, the $7,000 worth of arms and ammunition

which had been dispatched by the Erwin to that rendezvous two days before, and of proceeding thence to Hayti, in aid of the insurgents there in the various ways for which she was suited.

The evidence shows, therefore, a hostile expedition organized and dispatched from our ports in separate parts, to be united at a common rendezvous on the high seas, and to proceed thence to Hayti, in completion of the original hostile purpose with which the different parts were dispatched from our shores. Such an expedition is as much within the prohibition of section 5283 of the Revised Statutes as if all its parts were united and complete upon one single vessel at the moment of its departure. *U. S.* v. *Quincy*, 6 Pet. 445; *U. S.* v. *Gooding*, 12 Wheat. 472; *The Meteor*, (per BETTS, J.) 245–250.

A decree for the condemnation of the Mary N. Hogan must therefore be awarded.

UNITED STATES VS. 140 KEGS OF POWDER, &C.

In the District Court of the United States for the Eastern District of Virginia.

To the Honorable Robert W. Hughes, judge of the said court:

The libel and information of Edmund Waddill, jr., Attorney of the said United States for the Eastern District of Virginia, who prosecutes in this behalf for the said United States, and being present here in court in his own proper person, in the name of and in behalf of the said United States, against One Hundred and Forty Kegs, Cans, Canisters, or Boxes of Powder and against all other persons intervening for their interest therein in a certain cause of *sie*zure and for*fie*ture, alleges and informs as follows:

First. That the said property, to wit, one hundred and forty kegs, cans, canisters, or boxes of powder, is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or the said powder is secreted at the port of Richmond, Virginia, in some place to the said Attorney of the United States unknown, the same having been removed from the said schooner and thus secreted to prevent the *sie*zure thereof, within the limits of the United States, to wit, within the Eastern District of Virginia, and within the jurisdiction of this court, and is ready to be taken by the said schooner, or in some other way, to certain places to the said Attorney of the United States unknown, with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti); that said powder should be used in fitting out and arming the said schooner or some other vessel to cruise or commit hostilities against the subjects, citizens and property of the Republic of

Hayti, with which the United States of America are at peace and contrary to the form of the Statutes of the United States in such case made and provided.

Second. That the said property, to wit, one hundred forty kegs, cans, canisters or boxes of powder, is now lying at the Port of Richmond, Virginia, on a certain schooner, called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or the said powder is secreted at the Port of Richmond, Virginia, in some place to the said attorney of the United States unknown, the same having been removed from the said schooner and thus secreted, to prevent the *sie*zure thereof, within the limits of the United States, to wit, in the Eastern District of Virginia and within the jurisdiction of this court, the said powder being on and having been on, the said schooner, the "E. G. Irwin," the said schooner being then and there, one S. H. Dodd, as master, engaged in violating the neutrality laws of the United States by fitting out and arming, or being knowingly engaged and concerned in the fitting out and arming, the said schooner, or some other vessel with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized Government of the Republic of Hayti), that the said schooner or vessel should cruise or commit hostilities against the subjects, citizens and property of the Republic of Hayti, and the said powder, as aforementioned being then and there on the said vessel for the purpose of being used in fitting out and arming the said vessel or some other vessel, as a cruiser to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace, and contrary to the form of the statutes of the United States in such case made and provided.

Third. That the said property, to wit, one hundred and forty kegs, cans, canisters or boxes of powder, is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or the said powder is secreted at the said port of Richmond, Virginia, in some place to the attorney of the United States unknown, the same having been removed from the said vessel, and thus secreted to prevent the *sie*zure thereof, within the limits of the United States, to wit, within the Eastern District of Virginia and within the jurisdiction of this court, said powder being then and thereon, or having then and there been on the said schooner, and the said schooner being then and there, one S. H. Dodd as master, engaged in violating the neutrality laws of the United States, by fitting out and arming, or by being knowingly engaged and concerned in the fitting out and arming of the said schooner, or some other schooner or vessel, with the intent (in the service of a district or people of the island of Hayti, to wit, certain

rebels who are in a state of insurrection against the organized and recognized government of the Republic Hayti), that said schooner or other vessel should cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, and the said powder being then and there on the said vessel for the purpose of increasing and augmenting the force of some cruiser, ship of war, or other armed vessel by adding to and changing the quantity, kind and quality, of the ammunition on such cruiser, said cruiser being then and there used to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, the United States being at peace with said country, and contrary to the form of the statutes of the United States in such cases made and provided.

Fourth. That the said property, to wit, one hundred and forty kegs, cans, canisters or boxes of powder is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea, by vessels of the burthen of ten tons and upwards, or that the said powder is secreted at the said port of Richmond, Virginia, in some place to the said attorney of the United States unknown, the same having been removed from the said schooner and thus secreted to prevent the *sie*zure thereof, within the limits of the United States, to wit, within the Eastern District of Virginia, and within the jurisdiction of this court, the said powder being then and there secreted on the said vessel the "E. G. Irwin," one S. H. Dodd as master, either by the said Dodd as master, or by some person or persons, to the said attorney of the United States unknown, for the purpose of being then and there shipped and carried to some other point or points, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of this court, with the intent that the same should be then and there used in fitting out, furnishing, and arming the said vessel, or some other vessel, said vessel, or such vessel to be employed in the service of some other country, or people, with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti) to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace, and contrary to the form of the statutes of the United States in such case made and provided.

Fifth. That by reason of the premises, and by force of the statutes in such case made and provided, the said powder aforementioned and described has become forfeited.

Sixth. That all and singular the premises one and all are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the said attorney prays that the usual process of attachment against the said property, to wit, one hundred and forty kegs, cans, canisters or boxes of powder, and the monition of this Honorable Court in this behalf to be made, and that all persons interested in the said property aforementioned and described may be cited to answer the premises, and, all these proceedings being had, that the said powder may for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this Honorable Court, as forfeited to the said United States, according to the form of the statutes in such case made and provided.

EDMUND WADDILL, JR.,
U. S. Attorney.

In the District Court of the United States for the Eastern District of Virginia.

THE UNITED STATES
vs.
140 KEGS OF POWDER, &C. } Upon a Libel of Information.

This cause having been heard on the pleadings and proofs, and argued orally and also submitted on briefs by the advocates for the respective parties, and due deliberation being had in the premises, and after due consideration thereof,

It is ordered, adjudged, and decreed that 100 of the said kegs of powder (the district attorney releasing any claim as to the remaining 40 kegs) be and the same are hereby condemned as forfeited to the United States.

And it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time limited and proscribed by law and the rules and practice of this court, the clerk of this court shall issue a writ of venditioni exponas directed to the marshal of this district for the sale of the said 100 kegs of powder, and the proceeds of such sale to be distributed according to law, and that the costs of the plaintiffs be taxed and paid, subject to the approval of this court, out of the proceeds of the sale.

Richmond,
4th February, 1884.

RO. W. HUGHES,
Judge.

UNITED STATES VS. 214 BOXES MUNITIONS OF WAR, &C.

In the District Court of the United States for the Eastern District of Virginia.

To the Honorable Robert W. Hughes, judge of the District Court of the United States for the Eastern District of Virginia:

The libel and information of Edmund Waddill, Jr., attorney of the said United States, for the Eastern District of Virginia, who prosecutes in this behalf for the said United States, and being present and here in court, in his own proper person, in the name of and behalf of the said United States against Two Hundred and Fourteen Boxes of Munitions of War consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and against two cannon and complete fixtures, and against all other persons intervening for their interest therein, in a certain cause of seizure and forfeiture, alleges and informs as follows:

First. That the said property, to-wit: two hundred and fourteen boxes of munitions of war consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and two cannon and complete fixtures was on or about the —— day of —— 1883, found in and upon a certain schooner known as the "E. G. Irwin," said schooner being then and there engaged in violating the neutrality laws of the United States, and the said property and munitions of war being then and there on the said schooner for the purpose of violation of the neutrality laws of the United States by fitting out, or increasing, or augmenting some vessel, ship of war, cruiser or other armed vessel which belonged to some other, or was in the service of some other, foreign prince or state or of some colony, district or people, or to the subjects or citizens thereof, the same being at war with some other country, prince, state or colony, district or people, the United States being then and there at peace with such country, prince, state, colony, district or people, against the statutes of the United States in such case made and provided.

Second. That the said property aforementioned, to wit: 214 boxes of munitions of war consisting of shot and shells, cartridges, rifles, friction primers, and necessary flannel bags, and two cannon and complete fixtures were heretofore, to wit, on or about the 18th day of July, 1883, at the port of the city of New York and at the town of Lewis in the State of Delaware and within the jurisdiction of the United States secreted by some person or persons, to the said attorney unknown, in and upon a certain schooner called the "E. G. Irwin," S. H. Dodd, master, for the purpose of being then and there shipped to some other point, or points, within the admiralty and maritime jurisdiction of the United States, and to be then and there used in furnishing and fitting out, or arming some vessel, with the intent that such vessel should be employed in the service of some

foreign prince, or state, or of some colony, district or people, for the purpose of cruising or committing hostilities against the subjects, citizens or property of some other prince, state, colony, district or people with whom the United States are at peace. But the said property was not so used because before it could be shipped from the said schooner to the other vessel or steamer upon which it was to be run off the same was detected by the customs officers of the United States for the Eastern District of Virginia and the said schooner, along with the property aforementioned, is in the custody of the officers of the law, which said conduct, in using or attempting to use the said property as aforementioned is contrary to the statutes of the United States in such case made and provided.

Third. That by reason of the premises, and by force of the statute in such case made and provided, the said property aforementioned and described have become forfeited.

Fourth. That all and singular the premises are and were true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the said attorney prays the usual process of attachment against the said property and the monition of this Honorable Court, in this behalf to be made, and that all persons interesting in the said property aforementioned and described may be cited to answer the premises, and all due proceedings being had that the said property, to wit, 214 boxes of munitions of war, consisting of shot and shells, cartridges, rifles, friction primers, together with necessary flannel bags, and two cannon with complete fixtures, may, for the causes aforesaid, and others appearing, be condemned by the definative sentence and decree of this honorable court as forfeited to the said United States according to the form of the statutes in such case made and provided.

EDMUND WADDILL, JR.
U. S. Attorney.

In the District Court of the United States for the Eastern District of Virginia.

To the Honorable Robert W. Hughes, judge of the said court:

The amended Libel of Information of Edmund Waddill, Jr., Attorney of the United States for the Eastern District of Virginia, who prosecutes for the said United States in this behalf, and being present here in court in his own proper person in the name of and on behalf of the said United States against Two Hundred and Fourteen Boxes munitions of war consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and against two cannon and complete fixtures (an inventory of which said articles is herewith filed as a part of this libel), and against

all other persons intervening for their interest therein, in a certain cause of seizure and forfeiture, alleges and informs as follows, viz:

First. That the said property, to wit, 214 boxes munitions of war, consisting as aforesaid of shot and shells, cartridges, rifles, friction primers, and necessary flannel bags, and against two cannon and complete fixtures, and inventory whereof is filed as aforesaid, is now lying at the port of Richmond, Va., on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or was so on the said vessel at the time of the seizure thereof, and of the said goods in this proceeding, within the limits of the United States, to wit, the Eastern District of Virginia and within the jurisdiction of this court, and was ready when seized to be taken by the said vessel to certain places to the said Attorney of the United States unknown, with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti), that said munitions of war should be used in fitting out and arming the said schooner, or some other vessel, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace contrary to form of the statutes of the United States in such case made and provided.

Second. That the said property, to wit, 214 boxes munitions of war consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and against two cannon and complete fixtures, and inventory whereof is filed as aforesaid, is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or were so on the said vessel at the time of the seizure and the said goods in these proceeds, within the limits of the United States, to wit, in the Eastern District of Virginia and within the jurisdiction of this court, the said property, munitions of war as aforesaid, being found on the said schooner the E. G. Irwin, the said schooner being then and there, one S. H. Dodd, as master, engaged in violating the neutrality laws of the United States by fitting out and arming, or being knowingly engaged and concerned in the fitting out and arming the said schooner or some other vessel with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti), that said schooner or other vessel, should cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, and the said property, munitions of war as aforesaid, being then and there on the said vessel for the purpose of being used in fitting out and arming

the said vessel, or some other vessel, as a cruiser, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace, contrary to the form of the statutes of the United States in such cases made and provided.

Third. That the said property, to wit, 214 boxes of munitions of war, consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and against two cannon and complete fixtures, and inventory whereof is herewith filed as aforesaid, is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin," in the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or was so in the said schooner at the time of the seizure thereof, and the said property, munitions of war, as aforementioned in this proceeding, are within limits of the United States, to wit, the Eastern District of Virginia, and within the jurisdiction of this court, said property, munitions of war, as aforementioned, being then and there on the said schooner, and the said schooner being then and there, one S. H. Dodd, as master, engaged in violating the neutrality laws of the United States by fitting out or arming, or by being knowingly engaged and concerned in the fitting out and arming of the said schooner, or some other schooner or vessel, with the intent (in the service of a district or people of the Island of Hayti, to wit, certain rebels who are in a state of insurrection against the organized and recognized government of the Republic of Hayti); that said schooner or other vessel should cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, and the said property, munitions of war, as aforementioned, being then and there on the said vessel for the purpose of increasing and augmenting the force of some cruiser, ship of war, or other armed vessel by adding to the number of guns on such vessel or by changing those on board of her for guns of a larger caliber, said vessel to be then and there used to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace and against the form of the statute of the United States in such case made and provided.

Fourth. That the said property, to wit: 214 boxes of munitions of war consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and against two cannon and complete fixtures, and inventory is filed as aforesaid, is now lying at the port of Richmond, Virginia, on a certain schooner called the "E. G. Irwin" on the waters navigable from the sea by vessels of the burthen of ten tons and upwards, or was on the said vessel at the time of the seizure thereof, and of the said property, munitions of war as aforementioned, in this proceeding, within the limits of the United States and within the limits of the United States, to wit, in the Eastern District of Virginia and within the jurisdiction of

this court, the said munitions of war being then and there secreted on the said vessel, the "E. G. Irwin," one S. H. Dodd, master, either by the said S. H. Dodd as master, or by some person, or persons, to the attorney of the United States unknown for the purpose of being then and there shipped to some other point, or points, within the admiralty and maratime jurisdiction of the United States and within the jurisdiction of this court, with the intent that the same should be then and there used in fitting out, furnishing and arming said vessel, or some other vessel, said vessel, or such vessel, to be employed in the service of some other country or people, with the intent (in the service of a District or people of the island of Hayti, to wit, certain rebels, who are in a state of insurrection against the organized and recognized government of the Republic of Hayti) to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America are at peace, and contrary to the form of the statutes of the United States in such case made and provided.

Fifth. That all and singular the matters and things are and were true and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court, and that by reason of the premises, and by force of the statutes in such case made and provided, the said 214 boxes munitions of war, fully described as aforementioned, have become forfeited.

Wherefore, the said attorney of the United States prays the usual process of attachment against the said 214 boxes munitions of war, consisting of shot and shells, cartridges, rifles, friction primers and necessary flannel bags, and two cannon and complete fixtures, and inventory thereof, is regularly filed, and the monition of this Honorable Court, in this behalf to be made, and that all persons interested in the said 214 boxes of munitions of war may be cited to answer the premises, and all due proceedings being had that the said 214 boxes of munitions of war may be, for the causes aforementioned, and others appearing, condemned by the definative sentence and decree of this Honorable Court, as forfeited to the use of the said United States according to the form of the statute of the United States in such case made and provided.

EDMUND WADDILL, JR.,
U. S. Attorney.

In the District Court of the United States for the Eastern District of Virginia.

THE UNITED STATES
vs.
214 BOXES MUNITIONS OF WAR, &C.

Upon an Information Libel.

This cause having been heard on the pleadings and proofs, and argued orally, and also submitted on briefs by the advocates for the respective parties, and due deliberation being had in the premises, and after due consideration thereof—

It is ordered, adjudged and decreed that the said 214 boxes munitions of war, &c., be and the same are hereby condemned as forfeited to the United States: and it is further ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time limited and prescribed by law and the rules and practice of this court, the clerk of this court shall issue a writ of venditioni exponas, directed to the marshal, for the sale of the said 214 boxes of munitions of war, and that the proceeds of such sale be distributed according to law, and that the costs of the plaintiffs be taxed and paid, subject to the approval of the court, out of the proceeds of the sale.

RO. W. HUGHES,
Judge.

RICHMOND, *4th Feb'y., 1884.*

United States of America.

DEPARTMENT OF JUSTICE,
December 17, 1883.

Pursuant to the Act of Congress of February 22, 1849, I hereby certify that the annexed paper is a true copy of the original letter, on file in this office, from the Hon. Fred'k. T. Frelinghuysen, Secretary of State, dated December 14th, 1883.

In witness whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

[SEAL.]

BREWSTER,
Attorney General.

[Copy.—M. R. F.]

DEPARTMENT OF STATE,
WASHINGTON, *December 14, 1883.*

Hon. BENJAMIN HARRIS BREWSTER,
Attorney General.

SIR: Referring to your letter of the 20th ultimo enclosing a copy of one of the 17th of that month addressed to you by Edward Waddill, Jr., Esq., United States Attorney for Virginia, in which Mr. Waddill requests information in regard to the pending insurrection or rebellion in Hayti I have the honor to acknowledge the receipt of that of the 11th instant on the same subject and to state in reply that I received in a dispatch dated the 31st of March last from the minister of this government to that republic information that a formidable insurrection lead by one General Bozelais had broken out on the 27th of that month (March, 1883). The latest information which I have on the subject is a dispatch from Mr. Langston November 20th saying that the government forces were about to bombard Jeremie and Jacmel coast towns in possession of the rebels.

The government of which President Salomon is the head is that recognized by the United States as the regular government of Haiti.

I have the honor to be sir,
You obedient servant,
FREDK. T. FRELINGHUYSEN.

UNITED STATES v. TWO HUNDRED AND FOURTEEN BOXES OF ARMS, &C., and UNITED STATES v. ONE HUNDRED AND FORTY KEGS OF GUNPOWDER. 20 FEDERAL REPORTER, p. 50.

February 4, 1884. District Court of U. S., Eastern District of Virginia.

HUGHES, J. These are libels of information brought by the United States attorney, for and in behalf of the United States against two cannons, sundry cases of fire-arms and ammunition, and kegs of gunpowder, found on board the schooner E. G. Irwin, lying in the port of Richmond, and seized for forfeiture in August last. The two proceedings are founded upon section 5283 of the Revised Statutes of the United States, which, so far as applicable to this

case, provides that every person who, within the limits of the United States, attempts to fit out and arm, or is knowingly concerned in the furnishing, fitting out, and arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign people to cruise or commit hostilities against the citizens of any foreign state with which the United States are at peace, shall be punished as provided by law; and that all the materials, arms, and ammunition which may have been procured for the equipment of such a vessel shall be forfeited.

The case of the prosecution is claimed to be that the steam tug Mary N. Hogan, lying in the port of New York in July last, was made ready to be sent out to the waters of Hayti to cruise and commit hostilities in those waters, as a gunboat, in behalf of the insurrectionists of that Island, against the republic of Hayti; and that the two cannons, the cases of fire arms and ammunition, and the kegs of gunpowder, which were seized on board of the Irwin under process of this court, were intended to be put upon her as her armament and outfit, and to have been taken on board of the Hogan from the Irwin at some point on the Atlantic seaboard near Hog Island or Hampton Roads; and that they were shipped at New York on the Irwin for that purpose; and that Capt. Dodd, the master of the Irwin, knew of such character and destination of this part of his cargo, and therein willingly and knowingly assisted in the attempt to arm, fit out, and furnish the Hogan, although it is conceded that he was ignorant of the particular steamer which he was thus to aid in furnishing, and of her name. The prosecution have produced evidence tending to prove, among others, the following facts, namely:

On the fifteenth of March, 1883, an expedition left Philadelphia on the steamer Tropic, with arms and ammunition, nominally bound for Kingston, Jamaica. The steamer, instead of going to Kingston, went to the island of Inagua, lying between Hayti and Jamaica. There she took on board Gen. Bazelais, with some 75 armed men, and afterwards took on about the same number of men from an English steamer at sea. She then proceeded to the port of Marigoane, Hayti, with all men, arms, and ammunition, and landed them about daybreak, when, under the command of Gen. Bazelais, they successfully inaugurated the rebellion against the government of Hayti, which continued to maintain itself through the year 1883. This Gen. Bazelais had, before leaving Jamaica, supplied one Simon Soutar, a merchant of Kingston, with money for purchasing arms and ammunition. Those which went out on the Tropic were purchased in New York by one Henry A. Kearney, on Soutar's order, from Joseph W. Frazer, a dealer in such goods, and were shipped by Frazer to Phildelphia, and shipped by Kearney at Phildelphia on the Tropic. The master and mate of the Tropic were afterwards tried in Philadelphia, and convicted and sent to the penitentiary

for the violation of section 5286 of the Revised Statutes of the United States, of which they were found guilty. See *U. S.* v. *Rand*, 17 Fed. Rep. 142. Early in the summer of 1883 Soutar appeared in New York, and was in conference with Kearney, Frazer, one George W. Brown, and one Wellesley Bourke. Kearney had been vice consul of the United States, during some years before 1883, in Hayti. Afterwards he had been consul of Hayti in New York. Brown had conducted business in Jamaica, and knew Soutar, and had known Kearney for 10 years. Brown's business in New York in July last was that of an insurance agent, but he took part in the affair about to be mentioned as an outside job. Bourke was the agent of the Haytian insurrectionists in New York. A sequel of the intercourse of these men was that a steam tug called the Mary N. Hogan, capable of carrying some 75 tons or more in weight or freight, not in large bulk, was purchased, with money supplied by Soutar through the agency of Kearney, at a cost, all told, of $11,600. There were also purchased by Kearney, with funds supplied by Soutar, the guns, arms and ammunition which are the subjects of the present libels at a cost of $7,000. They were bought of Joseph W. Frazer, the same person who had sold the light articles which had gone to Marigoane on board the Tropic. Kearney, wishing to keep in the background, got Brown to engage a vessel by which these military goods might be sent out of New York billed for some home port; and Brown, through a regular ship-broker in New York, engaged the schooner E. G. Irwin, Silas H. Dodd, Master, for that purpose. It was concerted between Kearney, Brown, and Dodd that after these military goods were put on board the Irwin, and after the schooner should have proceeded down the coast for some distance, say to Hog Island or Hampton Roads, she should be hailed, by means of concerted signals, by a steamer bound from New York for Hayti, and that the munitions of war on board of her should be transferred to the steamer. Dodd, however, was not informed what steamer was to relieve him of his military cargo, or of its name.

The Hogan, before being purchased by Kearney for Soutar, was examined by Edward A. Bushnell, a friend of Kearney, who had sometime before been chief engineer of the Haytian Navy. John H. McCarthy, an adventurous and somewhat dissipated character, was employed as master, and the bill of sale of the Hogan, when purchased, was made in the name of McCarthy as owner; but he executed a mortgage for the amount of the purchase money, on the vessel, in favor of a Mr. Abbott, a merchant of Jamaica and friend of Soutar. Patrick Cox was employed as chief engineer and Finton Costigan as gunner. Several weeks were consumed in making repairs and preparations, and on the twentieth of July the Hogan, with a crew and a supply of coal, but without other freight, was ready to leave for her destination, when she was seized and libeled by the United States for an attempted violation of the neutrality

laws, under section 5283 of the Revised Statutes. Prevented in this way, as the Hogan was, from proceeding on her intended voyage, there was no steamer to overhaul the schooner Irwin in her sail down the coast, and to relieve her of the arms and military munitions which constituted part of her cargo. She had taken on pig-iron and cement at New York for Richmond at the time when she had been engaged to take the military munitions; and these latter had been consigned, as a matter of form, to "order" in Richmond. The Irwin, therefore, looked out in vain for a steamer during her voyage down the coast; and after standing off Hog Island for a couple of days, and lying at anchor in Hampton Roads for a week, she came with all her cargo, on to Richmond. Here she discharged her legitimate cargo, but was herself arrested and libeled by the government at the same time that the contraband portion of her cargo was seized.

In opposition to this train of testimony the defense deny that the Hogan was intended for warlike cruising in the waters of Hayti against that republic; insist that she was purchased for the purpose of being sent out and used in the port of Antonio, Jamaica, to raise a steamer, the Calvert, which had been sunk in the harbor there in a collision, and which had been purchased at auction, as she lay, by Soutar; and, not controverting many of the facts brought out in evidence by the prosecution, yet insist that the purchase of the arms and munitions seized on the Irwin was for the purpose of their being shipped, as a commercial venture, to Jamaica, on board the Hogan. The case is the same in its principles, and substantially the same in its evidence, with that of *The Mary N. Hogan*, which was tried in the District Court of the Southern District of New York in November last, and in which there was a decree of condemnation and sale against the Hogan. The case is reported in 18 Fed. Rep. 529. The evidence was so fully discussed in the opinion of Judge Brown, delivered in that case, that I am relieved of the necessity of a minute detail of so much of it as goes to show the purpose and destination for which the steam-tug Hogan was intended. I probably have a right to regard that part of the case before me as *res judicata*; but feeling disposed, in the cases at bar, to consider the question of the character and destination of the Hogan as an original one, I have gone anxiously and thoroughly over all the voluminous evidence before me on that subject, and find myself constrained to adopt precisely the conclusions that were reached by Judge Brown, and are set forth in his opinion in that case.

Counsel for defense insists that there is no direct proof of an illegal purpose in fitting out the Hogan. That would be an insufficient objection if the circumstances were such as to leave no other reasonable hypothesis than that of her guilt, and if they pointed conclusively to that fact. But there is very much direct evidence. The chief engineer, Patrick Cox, and the gunner, Finton Costigan,

of the Hogan, testified positively and circumstantially that McCarthy, the master of the Hogan, told them that they were to fight the vessel against the Haytian government; that she was going there for that purpose; that a bounty of $5,000 would be divided, on reaching there, between her four principal officers; and that they hired themselves for that express enterprise. Declarations of McCarthy to the same effect, made to others when off his guard from liquor, were also proved. The pretense that the Hogan was to be used in the port of Antonio to raise the Calvert is insufficient to overcome the circumstantial and positive evidence sustaining the hypothesis of the prosecution, that she was intended to be used as a gun-boat in the waters of Hayti. The Calvert cost, as she lay, $500 or £500,—the evidence seeming to be confused as to the two sums,—but I suppose the true price was £500. In order to save this £500, it is pretended that Soutar went nearly a thousand miles to New York, and paid $11,600 for a tug boat to be used for the purpose of raising the Calvert; putting on that tug boat when about to sail no sort of apparatus such as salvors employ in lifting ships from the bottom of the sea. If the raising of the Calvert had been Soutar's real object, the service of experienced wreckers provided with wrecking schooners, and wrecking pumps, anchors, cables, falls, and other expensive material such as are kept on hand only by professional wreckers, would have been sought in Havana, Savannah, Charleston, Norfolk, or New York, and employed, on a contingent compensation, to effect the raising. It will not do in an Admiralty court, accustomed to the trial of wrecking and salvage cases, to insist that a sensible man would content himself with purchasing a single steam-tug (an instrument of most subordinate utility in such an enterprise) in the expectation of raising with it an ocean steamship from the bottom of a harbor. Sunken vessels are not raised by steam tugs. All the apparatus of professional wreckers are required for the purpose. A court will generally make charitable presumptions in favor of accused persons, where there is a question of forfeiture, but I find myself unable to accept the presumption that a steam tug was bought in New York at a cost of $12,000 for the purpose of raising a steamship from the bottom of the harbor of Antonio, Jamaica, which cost only £500, and was to be sent out for that purpose without a particle of wrecking apparatus on board, except some sort of windlass, but loaded down with military guns and ammunition. The Hogan bore less than two feet of free-board. A cargo of 20 or 30 tons, which was the weight of these munitions, would have put down her deck to within 12 inches of the water. Even on a smooth July sea, a voyage to the West Indies would have been a desperate commercial venture, and yet we hear nothing of insurance either upon vessel or cargo. Commercially, the enterprise would have been reckless. As a military venture, it was no more desperate than military raids usually are, especially upon the

high seas. In short, it is impossible to read the evidence in these cases, in a judicial spirit, without being impressed with the irresistible conviction that the Hogan was bought and prepared in New York for the purpose of being sent directly to Hayti, with cannons, gun-carriages, small-arms, ammunition, and powder, which were to be taken on board at some point on the coast from some other vessel, and with this armament was intended to be used as a gun-boat in the waters of Hayti, in aid of the insurrectionists of that island, against that republic. Technically, this question comes to me as *res adjudicata* under the decree of the District Court of the Southern District of New York, rendered on the twenty-third of November, 1883. Actually, it is proved to me by evidence which leaves room for no other conclusion.

I come, therefore, to the additional questions on which the cases at bar depend, namely: *First*, whether or not the military material which is the subject of these libels was intended to be sent out as merchandise, in a commercial venture, and destined to some point in the West Indies for sale as merchandise. If not, whether this military material was intended to be sent directly to Hayti, as the military outfit of the gun-boat Hogan, for use in the hostile and insurrectionary enterprise for which that vessel was destined. No principle of the law is more clear or well settled than that merchandise, including munitions of war, may be sold to belligerents without violating the laws of neutrality. If those munitions had been sent on a vessel of commerce, which itself was not to engage in hostile operations, for the purpose of being landed and sold in a neutral port, even to a belligerent, they could not be confiscated. The general test of contraband as to neutrals is whether the contrabrand goods are intended for sale in a neutral market, or whether the direct and intended object is to supply the enemy with them. If the latter is the immediate object, and the property is destined to go directly to the belligerent for his immediate use, the case is within the inhibitions of the neutrality code, and the other belligerent may confiscate. In the cases at bar the question is in different form, while the principle is identical. It concerns the furnishing, fitting out, and arming, in a neutral jurisdiction, of a vessel about to proceed directly to the theatre of hostilities, and to engage in military operations. The Hogan, as already concluded, was intended for such a purpose, and on receiving these arms was intended to be directly bound to the waters of Hayti. These military goods were not to be taken to a neutral port to be sold in open market; they were not for sale at all. They were intended to be used on that steam tug in flagrant hostilities. When they left Frazer's warehouse they ceased to be articles of commerce. They were no longer for sale. They were to be put in a covert and deceptive manner upon a vessel at sea, and to constitute her outfit for engaging in hostilities against a state with which the United States are at peace.

It is useless to cite legal authorities on this subject. The law is in the form of an express statute. Its principles are plain and elementary, and need only to be stated to be comprehended and approved. It is not denied by the defense that these munitions were intended to be put upon the Hogan when she should have got fairly out at sea. Admitting that fact, they deny that the Hogan was destined to Marigoane, and insist that she was going on a wrecking expedition to raise a steamship from the bottom of the harbor of Antonio. That pretense was rejected by the court in New York, and is as emphatically rejected by this court. The Hogan was to go directly to engage in hostilities in the waters of Hayti; and these munitions were to be put upon her as her military furniture and outfit.

The only remaining question, therefore, is, did those who purchased the goods and shipped them on the Irwin, and did the Irwin's master, Capt. Dodd, know of this destination of the goods? Did they attempt to fit out the Hogan with these goods? Were they "knowingly concerned in furnishing, fitting out, and arming" the Hogan, or attempting to do so, with these goods? "Attempt to fit out and arm," "knowingly concerned in the furnishing, fitting out, and arming of any vessel with intent that such vessel shall be employed to cruise or commit hostilities against a state," etc., are the searching and comprehensive terms of the law applying to these libels. It were a waste of words, in view of the cumulative evidence in these cases, to state the proofs of the complicity of Soutar and Kearney in the purchase and preparation of the Hogan for her expedition; and of Soutar, Kearney, and Brown in the purchase, shipment on the Irwin, and intended shipment on the Hogan at sea, of the munitions mentioned in these libels. I shall perform no such act of supererogation. They made the "attempt;" they were "knowingly concerned" in it. The only question is as to Capt. Dodd's complicity; though that is not an essential part of the case. These munitions were sent from Fraser's warehouse in New York to the Irwin, which had come up to an East River wharf for the purpose of receiving them. Most of them were put on at that wharf; but the schooner fearing to lie long at that point, because of the powder on board of her, went off without receiving the remainder of the goods, and set sail down the coast. On going into the Delaware breakwater to Lewes, where the captain took on his family, the munitions which had been left were found to have been forwarded there by express, and were there taken on. There were two cannons. Some of the cases contained cannon-balls; others, ball cartridges, and others, fire-arms. Their weight became the subject of instant remark by the crew, who at once divined that, though shipped as "hardware" they were really arms, ammunition, and missiles of war. Capt. Dodd could not have been ignorant of their nature. The Irwin sailed on the 18th, and on that afternoon

Capt. Dodd informed his able seaman, Thomas Smith, that these munitions were to go to Hayti, to be used there by the rebels against their government. He also gave the same information to his mate, Moses Monks, and directed him and Smith to be on the lookout for a steamer which was to come along bound to Hayti, and to take these munitions off the schooner. These men testified as to the red and white flag with which Brown had provided Dodd, and that it was kept flying at the flagstaff. Dodd told them that the expected steamer would recognize them by this flag, and was to hail them by dipping her own flag three times. These men testify to their own knowledge of the hostile destination of these munitions for the Haytian rebels, and that they derived it from Capt. Dodd, and that the steamer which was to hail them was to take these munitions directly to the waters of Hayti. This evidence is direct, positive, emphatic. It is not a matter of mere inference that Capt. Dodd was knowingly concerned in an attempt to furnish, arm, and fit out a steamer, which was expected to come along-side of him, and take these munitions on board as her armament for committing hostilities against the government of Hayti. That Capt. Dodd did not know what particular steamer this was to be is immaterial. If a black steamer, sailing under a black flag, without name or home port, had come alongside of him at night, and, on complying with concerted signals, had taken these munitions on board and sailed off, without his being able to learn her name or identity, and she was proved to be destined, with Capt. Dodd's knowledge, on such an expedition as that for which the Hogan was intended, Capt. Dodd's guilty participation in this enterprise would have been no greater than it was in respect to the steamer Hogan, which was equally unknown to him. If the claimant, Soutar, and his agent, Kearney, were engaged in the attempt, by shipping them down the coast on the Irwin to put these munitions on the Hogan to be used on her in committing hostilities in Hayti, I do not know that it is necessary to establish a guilty knowledge of their scheme in Capt. Dodd. He might be innocent, though the goods were guilty; but whether necessary to the condemnation of the goods or not, I hold that the guilty knowledge and participation in the plot is clearly established against Capt. Dodd by the evidence. It is useless for me to reiterate what has so often been ruled in principle, that the placing of these goods directly on the Hogan, by those knowingly concerned in fitting out that vessel, was not necessary to justify the condemnation of the goods. If they had passed through the hands of many draymen, and other intermediaries, and over many decks, before reaching the vessel whose outfit and armament they were intended to be, that ultimate destination made them guilty goods, and subjected them to condemnation.

I will sign a decree of condemnation and sale in both of these cases.

UNITED STATES VS. CITY OF MEXICO.

District Court of the United States, Southern District of Florida.

THE UNITED STATES against THE STEAMSHIP "CITY OF MEXICO," HER TACKLE, &C.	Libel of information, prize of war.

To the Hon. James W. Locke, Judge of the District Court of the United States for the Southern District of Florida.

The libel of information of Livingston W. Bethel, Attorney of the United States for the Southern District of Florida, who prosecutes in behalf of the United States, and being present here in court in his proper person, in the name and behalf of the United States, against the steamship City of Mexico, her tackle, apparel and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges as follows:

First. That pursuant to the Revised Statutes of the United States C. M. Chester, commanding the United States ship of war Galena, on the —— day of ——, 1886, did seize the steamship City of Mexico as prize of war, and hath brought said steamship into the port and harbor of Key West, where she now lies.

Wherefore, the said attorney of the United States prays the usual process of attachment against the said steamship City of Mexico, her tackle, apparel and furniture, and that the same may, by the definite sentence and decree of this Honorable Court, be condemned as forfeited, to be distributed as by law is provided respecting the captures made as aforesaid.

(Sd.) LIVINGSTON W. BETHEL,
United States Attorney, So. Dist. of Florida.

District Court of the United States, Southern District of Florida.
In admiralty.

Libel of information, violation of neutrality laws.

To the Honorable James W. Locke, Judge of the District Court of the United States for the Southern District of Florida.

The libel of Livingston W. Bethel, Attorney of the United States of America for the Southern District of Florida, who prosecutes on behalf of the said United States of America, and being here present in court in his proper person, in the name and on behalf of the United States of America, against the steamship "City of Mexico," her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of forfeiture, alleges and informs the court as follows:

First. That the United States steamer "Galena," a commissioned vessel of the Navy of the United States, heretofore, to wit, on the fifteenth day of February, in the present year 1886, being under

command of Colby M. Chester, a commander in the Navy of the United States, did, at the island of San Andreas, off the coast of Costa Rica, seize and take the said steamship "City of Mexico," belonging to a citizen of the said United States, and did send the said vessel into this port, where she now lies within the jurisdiction of this court, for and because of a violation of section 5283, of the Revised Statutes of the United States, in this: that the said steamship "City of Mexico," was at the port of New York, and within the limits of the United States, on or prior to the 22d of December, 1885, fitted out by one Emelio Delgardo (otherwise known as Genl. Delgardo), and Manuel Morrie (otherwise known as Col. Morrie), with intent that said steamship, the said "City of Mexico," should be employed in the service of said Emilo Delgardo, and the said Manuel Morrie, and other persons to the said attorney unknown, to commit hostilities against the government and people of the Republic of Honduras, a republic and people with whom the United States are at peace.

Second. That by reason of having been fitted out as aforesaid the said steamship "City of Mexico," her tackle, apparel and furniture became and was forfeited, as in and by said Section 5283, is provided and declared.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States.

Wherefore the said attorney of the United States, on behalf of the United States, prays that process in due form of law according to the rules and practice of this Honorable Court, issue against the said steamship the said "City of Mexico," her tackle, apparel and furniture, may issue, and that all persons interested may be cited to appear to answer the premises, and that this Honorable Court may be pleased to decree the forfeiture declared by said Section 5283 of the Revised Statutes, and that the said steamship the said "City of Mexico" may be condemned and sold, and the proceeds thereof be distributed as by said statute is provided, and that otherwise law and justice may be administered in the premises.

Sworn to before me this 1st day of April, 1896.

E. O. LOCKE, Clerk.

(Sgd.) LIVINGSTON W. BETHEL,
Attorney for the United States for the Southern District of Florida.

THE CITY OF MEXICO. 28 FEDERAL REPORTER, p. 148.

(*April 19, 1886. District Court of U. S., Southern District of Florida.*)

LOCKE, J.:

The only ground upon which a libel for prize can be sustained is that of a state of war. Prize only relates to or is connected with such a state or condition. A vessel captured for engaging in piratical aggression becomes a prize on account of the state of universal

war presumed to have been declared by a pirate against commerce and human kind at large which requires no reciprocal declaration from any nation. Whether piracy is considered as a name applied only to indiscriminate plundering and robbery either upon the high seas or upon the coasts where the high seas are used as the basis of operation where the *animus furandi* is the distinguishing feature as is expressed and held by President Woolsey precluding the idea of a revolutionary or political sentiment, or whether there may be acts of piracy committed in following out the direct course of the revolutionary struggle as is contended by Judge Brown in the recent case of the Ambrose Light, 25 Federal Reporter 408, there must be some overt act either in committing or attempting some offense against the law of nations to give a piratical character to a vessel. An intent alone can never determine such a state of warfare as would justify the seizure of a prize. There is in this case nothing that can be characterized as an overt act of piracy or warfare and the libel for forfeiture as prize must be dismissed.

The second libel is for forfeiture for the violation of a municipal statute embodied in Section 5283, Rev. St.

It is claimed in behalf of the respondent that, if one libel is dismissed, such dismissal necessarily precludes an examination of the other, upon the principle of election or choice of action against the thing. But these libels, although against the same vessel, found under peculiar circumstances, are in no way based upon the same cause of action. The libel for prize is founded upon the law of nations, and depends for proof upon the facts of her acts upon the high seas; the libel for forfeiture is for the violation of a municipal statute, and depends upon a set of facts and circumstances entirely different from that of piratical aggression. The offenses charged are separate and distinct, and the cause of action is in nowise the same. In *U. S.* v. *Weed*, 5 Wall. 62, and *The Watchful*, 6 Wall. 91, the same question is directly settled.

The libel for forfeiture alleges that certain persons were knowingly concerned in the furnishing and fitting out of said vessel, with the intent that she should be employed to cruise or to commit hostilities against the people of the state of Honduras, with whom the United States is at peace. The peace existing with the state of Honduras may be judicially recognized, and there only remains the questions of knowingly furnishing and fitting out of said vessel, and the intent with which she was fitted out.

The terms "furnishing" and "fitting" have no legal or technical meaning which requires a construction different from the ordinary acceptation in maritime and commercial parlance, which is to supply with anything necessary or needful. That by the furnishing and fitting out is intended something different from the arming, is not only apparent from the language of the statute, but it has been judicially determined in *U. S.* v. *Quincy*, 6 Pet. 445. This vessel

was furnished and fitted out, in the usual acceptation of the terms, provided with the necessary supplies, and put in a condition for proceeding to sea, within the United States. Whether she was well furnished or thoroughly fitted out is not the question, if she was so supplied as to proceed on her way. She was furnished with the ordinary engineer's supplies and steward's stores, and sailed from New York the twenty-second of December, 1885. What was the intent with which she was fitted out, and either dispatched or taken on her way by the parties in charge, becomes a more important and difficult question, involving conclusions both of law and fact.

Whatever may have been the intention of the legislators regarding the particular class of hostilities they were desired to prevent, all we have to decide from is the language with which they have clothed their ideas, and this is broad enough to include all classes of hostilities. It has been ably argued that unless the vessel is so armed that she herself can be the offending party or thing, or, in other words, carries such an armament as can throw projectiles from her port, or is equipped as a man-of-war or armed vessel, the statute will not apply. The terms "peaceful" and "warlike," "friendly" and "hostile," are thoroughly recognized; and the line so plainly marked between what should be the course and conduct of a vessel engaged in a peaceful commercial venture, and one fitted, prepared, and intended for hostilities, is so distinct and well defined as to permit no mistake, nor require a reference to a judicial decision.

A peaceful act, a peaceful voyage, cannot be a hostile one; nor can acts looking towards war or enmity escape from the general term "hostilities." It is true that vessels may frequently be engaged in transporting troops as passengers, and war material as freight, without themselves having any connection with the actual hostilities contemplated, so that their voyages in no way partake of the nature of hostile acts, nor they be liable to be charged with the commission of hostilities. *The Lafayette* and *Ville de Paris*, cited in Hall, Int. Law. 564. Or where troops, conveyed as passengers only, are landed as such, although bound on a hostile expedition, where all connection and relation existing between them and the vessel are to be terminated at their leaving her side, the question becomes one of more difficulty. But when it is intended that a vessel shall herself be part and portion of a hostile expedition; that she shall carry troops, not for the purpose of making quiet and unopposed landing, and leaving them to take the risk of war subsequently, but making for them, or with them, if found necessary, a forcible and hostile landing; standing ready to put them on shore, or receive them on board defeated; to convey and furnish them with arms, ammunition, and stores; to act as a base of supplies and operations, ready to assist in committing any hostile

acts that can be completed by armed men, she sharing all chances of success or defeat, and under the direct orders and control of the commander of a hostile expedition—it cannot be admitted that her acts would be anything but hostilities. A vessel is a passive instrument, and is but made the means of success; and it matters but little, in the effect of her hostilities, whether she throw shot and shell from her ports, or dispatched boat-loads of armed men from her gangways.

It has been conclusively determined that it is not necessary that the vessel be armed or manned for the purpose of committing hostilities before leaving the United States, if it is the intention that she should be so fitted subsequently. *U. S.* v. *Quincy, supra.* So there need be no evidence of such arming or manning.

The intention of parties charged with a crime, when the intent is the gist of the offense, is the most difficult of all matters to prove, and in a vast majority of instances, like the present, can only be shown by a chain of circumstances fitting into each other, against every point of which may be expected the denial of all parties in interest, either positive and direct, or as nearly so as the respect for an oath, and the ingenuity of the witness will permit.

This vessel, ostensibly owned by Christian B. Hollander, of New York, sailed December 22, 1885, from New York for Central America, having for cargo about 7,000 bags of corn. She was cleared for Progresso, Blewfields, and Corn island, and had as passengers Gen. Emilio Delgado, Col. Manuel Moray, Mariana Soto, and 17 others, who were going at the expense and in the employ of Gen. Delgado. The master was intrusted with a bill of sale of the vessel to Gen. Delgado, and a power of attorney to execute it at any time. He also had a letter of instructions, directing him that, after he should have discharged his cargo of corn at Progresso, he should receive his orders from Gen. Delgado, who accompanied him, should visit such ports or places, take such cargoes or such passengers from and to such ports or places as he (Delgado) should direct. Before leaving New York there were several cases of merchandise taken on board; but, after inspection by officers of the custom house, they, which proved to be a cannon, with carriage, furniture, and ammunition, were taken out, and, when the vessel sailed, left behind. It is testified to directly by a number of the crew that while on the voyage Col. Moray and several of the passengers openly spoke of their plans of the voyage; saying that they were going on an expedition to Honduras, and were to fight; that they were going to receive arms from another vessel, and were going first to capture Ruatan; and that the steamship was going to cruise between this island and the mainland to cut off communication. When they reached Progresso, Col. Moray (who next to Gen. Delgado seemed to be in charge of the company) requested the purser or steward to get men, telling him they were to go to Honduras to fight for Gen.

Delgado. They took on board eight passengers at Progresso, who came on Gen. Delgado's account, and spoke of their being soldiers, and showed their wounds and scars. The ship proceeded to Belize, where they took on board 10 or 11 men, also on Gen. Delgado's account, and under his control, one of whom declared himself employed as pilot in Honduras waters, but no cargo. Thence they proceeded to Blewfields, then Corn island, at both of which places they remained some time; several of the party saying that they were waiting for arms and ammunition expected by the steamer Neptune; but finally, she not arriving, they cleared for Kingston, Jamaica, by way of St. Andrews. At the several ports she visited, the authorities forbade the landing of passengers on account of their rumored character and business; and finally at St. Andrews the crew made a formal protest before the consul agent against proceeding further in her, and after a hearing and investigation before the consul, Commander Chester, commanding the United States ship Galena, was advised by him that the circumstances would justify the seizure.

There were found on board, not belonging to them, three flags, blue and white, with five stars, resembling the Hunduras flag; bird's eye views of Ruatan, Truxillo, and other places in Honduras, showing particularly all defenses and fortifications; also maps showing principal cities, towns, and roads; several revolvers; three swords; and in possession of Gen. Delgado a case of surgical instruments and bandages, two sets of field telegraph instruments, 10 half barrels of beef, and 100 barrels of flour, which were claimed as the property of Delgado, and bore the same shipping marks as the cannon and ammunition taken from the vessel before leaving New York. At Blewfields, Gen. Delgado drew $4,000 in silver, part of which has been disbursed for the expenses of the ship. The rest was on board.

These are circumstances connected with the vessel herself and her voyage. Much of the conversations in regard to the future use of the vessel, and the intentions of the parties, has been denied with more or less directness. The defense is that Gen. Delgado held a grant or concession of a large tract of land on the Rio Coco, Nicaragua, and that the expedition was to be one for colonization and agricultural purposes, rather than hostile; that the passengers and parties employed at Merida and Belize were agricultural laborers, and not soldiers; and that their final intended destination was Blewfields; but their not being permitted to land interfered with their plans, and brought about the final suspicious circumstances. Were there no other circumstances connected with the case that bore upon it, perhaps, in the leniency of courts, and the disinclination to enforce forfeitures, such view might be accepted; but there were chains of evidence leading to the City of Mexico from another direction.

It appears in evidence that before the vessel left New York, Mr. Marks, a member of the firm of Straus & Co., the agents of the vessel in that city, and through whom all the business was transacted, procured from Mr. Jex, of the firm of Wm. Jex & Co., who had permanent business relations, and a resident agent at Corn island, a letter introducing Gen. Delgado, to their agent, Capt. Nelson, at Corn island; and upon the strength of that letter advised him that they (Straus & Co.) had advised their agent at Kingston to ship to him some goods which they requested him to hold at the disposal of Mr. Delgado for reshipment per City of Mexico or otherwise; and, when confronted by Mr. De Long, of the same firm, regarding this letter, admitted that they had purchased the arms, and shipped them to Kingston, intending they should be landed at Corn island, and explained that it was but a friendly turn to ex-President Soto, who had employed them to purchase the arms and City of Mexico, in which business they only acted as agents. There is an attempted contradiction or denial of a portion of this by Marks; but in view of his false testimony when first before the commissioner, in which he denied that he knew of Delgado, when the proof is positive that he made application to Mr. Jex for a letter of introduction, and explained that he would not need any money, there can be no question as to which witness to believe. This explains what goods he was to ship to Delgado at Corn island; and why they were not received is explained by the testimony of A. D. Straus, of the same firm, who states that this cannon and ammunition put ashore from the City of Mexico was afterwards shipped by a steamer of the Atlas Line, consigned to order at Kingston, but was returned by another vessel of that line because the government would only allow arms to remain there by special permit. After the return of the arms from Kingston, the next attempt to forward them to the City of Mexico we find undertaken by the Norwegian steamer Fram, chartered by Lord & Austin for 40 days to carry a load of arms and ammunition to deliver to order at St. Andrews, Corn island, or Blewfields, calling at Turks Island on the way out to get some laborers, presumably to take along with the arms. The master of the Fram is not, under the circumstances, to be presumed to know where the arms were going; but one of these laborers, James Bogan, who had been sent ahead to Turks Island by the Santo Domingo, testifies that he was to wait at Turks Island, to be shipped thence on the Fram, and from the Fram to the City of Mexico, where he was to report to Gen. Delgado. He tells the same story in his testimony about the intended attack upon Honduras, with some exaggerations, but with no communication with any of the crew of the City of Mexico, nor any inducement that I can perceive for false swearing. The Fram proceeded to St. Andrews, Corn island, and Blewfields, but in the mean time the City of Mexico had been seized, and was on her way to

Key West, and consequently the order to whom the arms and ammunition were consigned was not found, and they were returned and left at Kingston. Before the City of Mexico left New York it was intended to have goods sent her, to be received at Corn island by Gen. Delgado. If they were not the arms and ammunition, what prevented their being regularly shipped, and why not received? If Gen. Delgado's voyage was to terminate at Blewfields, and he was to proceed from there to Rio Coco, why were his goods shipped to Corn island? If he was, in good faith, attempting to colonize a large tract in Nicaragua, had he not enough influence with the authorities to obtain permission to land at their only seaport. But one conclusion can be arrived at; the City of Mexico was intended for receiving arms at Corn island, or St. Andrew; and, under the orders of Delgado, was waiting for them, whether they came in the Neptune or some other vessel.

What were the intentions for her future course? Bogan says that he was told they were to make an attack on Honduras. It is urged that Bogan has not been connected with the City of Mexico sufficiently to make his testimony relevant; but I think the combination of circumstances proven shows that he was employed or hired to join her on the expedition, under leaders engaged in the same enterprise and the declaration of such parties may be considered. The crew of the City of Mexico say that those partially in command of a part of the expedition openly announced the intention to attack Honduras. Although not in Honduras waters, nor to go there on any legitimate voyage, they had employed a party who declared himself to be a Honduras pilot. They had bird's eye views of the fortifications and places along the coast of Honduras. The whole character of the voyage shows it was not a commercial one. No cargo was taken, no cargo looked for,—only arms and ammunition, which are not the implements of peaceful colonization or agriculture. The arms were not shipped or to be received for sale as a financial speculation. There was no war in that part of the world going on or in contemplation, except what was intended by Gen. Delgado, for whom they were intended.

I can arrive at but one conclusion: that acts of hostility were contemplated and intended at the time of furnishing and fitting out the City of Mexico, in which she was to take an active part, and that it was intended that she should receive arms and ammunition, and, in the language of the statutes, she should commit hostilities.

The decree of forfeiture must follow.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX I.

PART III.

NEUTRALITY LAWS OF THE UNITED STATES AS TO MILITARY EXPEDITIONS AND ENTERPRISES.

"SECTION 5286. Every person who, within the territory or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars and imprisoned not more than three years."

APPENDIX.

Indictment Under Section 5440, for Conspiracy to Violate Section 5286.

INTRODUCTION.

The President, in his message of December 2, 1895, quoted by the Supreme Court in the case of the "Three Friends," lately decided, states that Cuban insurrection:

> "by arousing sentimental sympathy and inciting adventurous support among our people has entailed earnest effort on the part of this Government *to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty.*"

Admitting the individual sympathy of citizens, the President holds that—

> "the plain duty of their Government is to observe in good faith the recognized obligations of international relationship."

And he adds:

> "The performance of this duty should not be made more difficult by a disregard on the part of our citizens of the obligations growing out of their allegiance to their country, which should restrain them from violating, as individuals, the neutrality which the nation, of which they are members, is bound to observe in its relations to friendly sovereign states."

In the same opinion which includes the above quotations, the Supreme Court says:

> "As mere matter of municipal administration no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while *good faith* towards friendly nations requires their PREVENTION."

The main question in the "Three Friends" case was whether a recognition of belligerency was a necessary prerequisite to the application of Section 5283 to vessels employed in the service of the Cuban insurgents. The Supreme Court decided that it was not, and in that connection used the following language:

> "In Wiborg *vs.* The United States, 163 U. S. 632, which was an indictment under Section 5286, *we referred to the eleven sections from 5281 to 5291, inclusive, which constitute Title LXVII of the Revised Statutes*, and said, 'The statute was undoubtedly designed in general to secure neutrality in war between two other nations, or between contending parties recognized as belligerents, but *its operation is not neces-*

sarily dependent on the existence of such state of belligerency,' and the consideration of the present case, arising under Section 5283, confirms us in the view thus expressed."

. . . . . .

"Any other conclusion rests on the unreasonable assumption that the act is to remain ineffectual unless the Government incurs the restraints and liabilities incident to an acknowledgment of belligerency; ON THE ONE HAND PECUNIARY DEMANDS *reprisals or even war may be the consequence of failure in the performance of obligations towards a friendly power, while* ON THE OTHER, *the recognition of belligerency involves the rights of blockade, visitation, search and seizure of contraband articles on high seas and abandonment of all claims for reparation on account of damages suffered by our citizens from the prevalence of warfare.*

"No intention to circumscribe the means of avoiding the ONE by imposing as a condition the acceptance of the contingencies of the OTHER can be imputed."

In 1883 in United States *vs.* Rand, a case growing out of the Haytien insurrection, Judge Butler in the District Court of the United States for the Eastern District of Pennsylvania, gave a fair and reasonable construction to Section 5286 of the Revised Statutes referring to military expeditions and enterprises and a conviction followed. His charge in that case will be found in the Appendix, pages 1 to 4. In that charge he says:

"*The statute involved is founded in a wise and beneficent purpose, the discharge of an important national duty towards other friendly powers, and its violation involves the national honor as well as the public peace.*"

In 1896 in United States *vs.* Wiborg, a case growing out of the present Cuban insurrection, the same learned judge expounded the law for the aiders and abettors of the Cuban insurrection exactly as he had done thirteen years before for those interested in the Haytien insurrection. His charge in that case will be found in the Appendix pages 4 to 9. In it he says:

"No sympathy or prejudice must be allowed to influence your minds in passing on this case. *We have nothing to do with the controversy between the people of Cuba and the government of that island. We are concerned only with the execution of the law in this case.* We have only to consider whether the statute to which your attention has been called has been violated. It is our duty to see that the law is honestly and justly executed, that is all. *The peace and safety of the community so manifestly depend upon the faithful and honest administration of the law that no man can fail to see it.*"

In that case a conviction followed. The case was carried to the Supreme Court of the United States, and Judge Butler's construction of the law and the conviction of Wiborg were affirmed.

The opinion of the Supreme Court including the statement of the case and the dissent of Mr. Justice Harlan will be found in the following pages, from 1 to 22.

As to Section 5286 the first important point decided by the Supreme Court, in the Wiborg case, was that although this was a penal statute, it must be reasonably construed and not so as to defeat the obvious intention of the legislature.

In regard to what is a military expedition or enterprise, the court say:

> "But this statute is to be construed as other domestic legislation is, and its meaning is to be found in the ordinary meaning of the terms used."

The Supreme Court adds that the variant constructions by the district courts may be largely attributable to the difference in the facts under consideration in the particular cases, but it only cites with approval those constructions which substantially agree with that of Judge Butler in the Wiborg case, and his construction of the statute is expressly approved.

The Supreme Court quotes the following language from Judge Butler's charge:

> "In passing on the first question, it is necessary to understand what constitutes a military expedition within the meaning of this statute. For the purposes of this case, it is sufficient to say that any combination of men organized here to go to Cuba to make war upon its government, provided with arms and ammunition, we being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, artillery, or cavalry. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, and to have provided themselves with the means of doing go. I say 'provided themselves with the means of doings so,' because the evidence here shows that the men were so provided. Whether such provision as by arming, &c., is necessary need not be decided in this case. I will say, however, to counsel that were that question required to be decided I should hold that it is not necessary."

And the Supreme Court itself says

> "It appears to us that these views of the district judge were correct as applied to the evidence before him. This body of

men went on board a tug loaded with arms; were taken by it thirty or forty miles and out to sea; met a steamer outside the three-mile limit by prior arrangement; boarded her with the arms, opened the boxes and distributed the arms among themselves; drilled to some extent; were apparently officered; and then, as preconcerted, disembarked to effect an armed landing on the coast of Cuba. The men and the arms and ammunition came together; the arms and ammunition were under the control of the men; the elements of the expedition were not only 'capable of proximate combination into an organized whole,' but were combined or in process of combination; there was concert of action; they had their own pilot to the common destination; they landed themselves and their munitions of war together by their own efforts. It may be that they intended to separate when they had reached the insurgent headquarters, but the evidence tended to show that until that time they intended to stand together and defend themselves if necessary. From that evidence the jury had a right to find that this was a military expedition or enterprise under the statute, and we think the court properly instructed them on the subject."

The court, after noticing that the expedition started in the Southern District of New York, and did not come into immediate contact with the defendants at any point within the jurisdiction of the United States, as the "Horsa" was a foreign vessel, holds:

"The 'Horsa's' preparation for sailing and the taking aboard of the two boats at Philadelphia constituted a preparation of means for the expedition or enterprise, and if the defendants knew of the enterprise when they participated in such preparation, then they committed the statutory crime upon American soil and in the Southern District of Pennsylvania where they were indicted and tried."

As to the admission in evidence against the captain of the "Horsa" of the declarations of the members of the expedition that they were going to Cuba to fight, the court said:

"Assuming a secret combination between the party and the captain or the officers of the 'Horsa' had been proven, then on the question whether such combination was lawful or not, the motive and intention, declarations of those engaged in it, explanatory of acts done in furtherance of its object, came within the general rule and were competent."

The general rule was quoted with approval from 2d Peters, 365

"Where two or more persons are associated together for the same illegal purpose any act or declaration of one of the

> parties in reference to the common object and forming a part of the res gestæ may be given in evidence against the others."

In the President's proclamation of July 27, 1896, after reference to the previous proclamation of June, 1895, occurs the following passage in the preamble:

> "Since the date of said proclamation said neutrality laws of the United States have been the subject of authoritative exposition by the judicial tribunal of last resort, and it has thus been declared that any combination of persons organized in the United States for the purpose of proceeding to and making war upon a foreign country with which the United States are at peace, and provided with arms to be used for such purpose, constitutes a 'military expedition or enterprise' within the meaning of said neutrality laws, and that the providing or preparing of the means for such 'military expedition or enterprise,' which is expressly prohibited by said laws, includes furnishing or aiding in transportation for such 'military expedition or enterprise.'"

Mr. Justice Harlan in his dissent in the Wiborg case, page 22, says: "*Curiously enough the charterer was not indicted;*" and it does not appear that John D. Hart, the charterer, has since been indicted for the "Horsa" expedition, but he was indicted for another expedition starting on the "Laurada," tried before Judge Butler in February, 1897, and convicted. Judge Butler's charge in the Hart case will be found in the Appendix hereto, pages 9 to 20.

In the President's proclamation of July last, already quoted from, occurs the following recital calling special attention to Section 5440, as to conspiracy to violate the statutes of the United States, in connection with the neutrality laws:

> "Whereas, by express enactment, if two or more persons conspire to commit an offense against the United States, any act of one conspirator to effect the object of such conspiracy renders all the conspirators liable to fine and imprisonment."

During the present year Carlos Roloff, J. T. Smith and J. J. Luis were indicted under Section 5440, for conspiring to send off from the port of Baltimore a military expedition in the steamer "Woodall," in July, 1895, and in March, 1897, J. J. Luis was tried and convicted under said indictment before Judge Morris in the United States District Court for the District of Maryland. The charge of Judge Morris in that case will be found in the Appendix hereto, page 21.

In this connection it is interesting to note that Carlos Roloff and

J. T. Smith, indicted with Luis, are both fugitives from justice—Roloff being admitted to bail before the trial forfeited it, and Smith has succeeded in evading arrest.

The undersigned ventures to hope the foregoing introduction and accompanying pamphlet will be of some service to the courts and officers of the United States in the discharge of their duties, and of interest to the profession and others.

Because Section 5286 is enforced by criminal proceedings against persons he has deemed it proper to confine this introduction to the citation of authorities without comment or argument.

CALDERON CARLISLE,
Legal Adviser to the Spanish Legation.

WASHINGTON, D. C., *April* 10, 1897.

J. H. S. WIBORG ET AL. vs. THE UNITED STATES.

Opinion of Supreme Court of the United States by Fuller, Chief Justice, (1896).

Wiborg, the captain, and Petersen and Johansen, the mates, of the steamer Horsa, were indicted in the District Court of the United States for the Eastern District of Pennsylvania under section 5286 of the Revised Statutes. The indictment charged that defendants, "mariners, at the district aforesaid and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, begin, set on foot, and provide and prepare the means for a certain military expedition and enterprise to be carried on from thence against the territory and dominions of a foreign prince, to wit, against the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being then and there at peace with the King of Spain, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America." They were tried before Judge Butler and a jury, and convicted. Motions in arrest of judgment and for a new trial were severally made and overruled, and defendants were sentenced to pay fines and to serve terms in the State penitentiary. This writ of error was thereupon sued out and defendants admitted to bail.

The Horsa was a Danish steamer, sailing under the Danish flag, and defendant Wiborg, its captain, was a subject of the King of Denmark, as were also his co-defendants, as claimed by their counsel.

The Horsa was engaged in the fruit business for John D. Hart & Company, of Philadelphia, and on November 9, 1895, cleared from Philadelphia for Port Antonio, Jamaica. She had on board but little cargo, consisting of two life-boats, a lot of empty boxes and barrels, two horses, some horse feed, bales of hay and boxes of corn, all of which were entered on her manifest. Just before sailing, Captain Wiborg received a message (in writing but not produced), which, he said, was: "After I passed the Breakwater to proceed north near Barnegat and await further orders." The Horsa sailed between six and seven P. M., and, after passing the Delaware Breakwater, her proper course would be southward. She turned, however, to the northward, went up the Jersey coast to Barnegat light and anchored on the high seas between three and four miles off the shore.

Between ten and eleven the same evening the steam lighter J. S. T. Stranahan sailed from Brooklyn, carrying some cases of goods and two life-boats, which had been put on board by the crew of the lighter during the evening. On the lower bay of New York, below Staten Island, during the night she took on board between thirty and forty passengers, mostly dark-complexioned men speaking a foreign language, apparently Cubans or Spaniards. The lighter then ran down to Barnegat, where she saw the Horsa under a white flag. She also ran up a white flag, went alongside, and put aboard her passengers with the cases of goods and the life-boats. They brought authority in writing from John D. Hart & Co., which was not produced. Captain Wiborg saw the transfer made, and assented to it. His firemen complaining, he answered: "I told them if anybody had to hang for this I would be the man to hang for it." He testified that the man on the lighter brought him a message from John D. Hart & Company. "He told me to take those men and luggage and whatever they had aboard the Horsa, and let them off whenever they called for it to be let off. I shipped two boats at the same time, and the order of my message was to deliver those two boats to those men and the two boats that I had shipped here in Philadelphia. . . . The only order was they had a colored man there that they called the pilot, and when ever he called for them to be let off I should let them off and give them the boats." As to the boats taken on at Philadelphia and those taken on off Barnegat, he was "to deliver them to these men as soon as they called for them. . . . The pilot did not tell me where he was going. I did talk to him, but he could talk very little English." The captain testified that the writing from J. D. Hart & Co., "to take whatever was in the tug, the men and their luggage and boxes, and let them off whenever they called for it to be let off," did not strike him as an unusual thing; it did not strike him as unusual "that these men were to be taken on board and turned out on the sea with the boats." It appeared and was admitted that there was an insurrection in Cuba. The captain was informed that the party was going to Cuba, and believed the men were going to fight for Cuba, but was careful to ask no questions, and testified that he considered his own part in the affair to be lawful. The charter party was not produced.

After boarding the Horsa, these persons broke open the boxes which they had brought with them, and took out rifles, swords and machetes, and one cannon. They also had cartridge belts, medicines, and bandages with them. They were not in uniform, but there was evidence that some of them had caps with a little flag, which they said was a Cuban flag. They brought their own food with them. The evidence tended to show that when these men divided up the arms, every man had a rifle; that certain of them,

understood to be officers, had swords and revolvers; that one seemed to be in command of them; and that this commander asked some of the crew whether they would fight if attacked by a Spanish gunboat. There was also some evidence that there were military exercises in the nature of drilling by from three to seven men at a time; that these persons stated that they were going to Cuba to fight the Spaniards; that on the second day out they made small canvas bags to put cartridges in, and unpacked a bale of blankets which they had brought with them, wrapped one hundred and fifty spare rifles in these blankets in small bundles, about five in each, and threw the boxes overboard in which the rifles had come, taking a rifle, sword and machete apiece, and practicing with them and the cannon. There were three kinds of cartridges and two kinds of rifles. One witness stated that, as he was informed by them, there were small Winchesters for the cavalry and big rifles for the infantry; big revolvers for the officers; and that the cannon was a Maxim gun, in charge of a French Canadian. This machine gun was worked with a slot and a crank, and had its own cartridges. The witness saw it worked, and saw them practicing with it, and the man in charge showed him how they were doing it. Some testimony was introduced on behalf of defendants to the effect that a machete is generally carried by the inhabitants of the West Indies, and has many peaceful uses. One of the defendants' witnesses admitted that it was a formidable weapon, and, moreover, that he had never seen citizens carry guns in Cuba. It is unquestioned that the machete is used for both war and peace, it being described in the Century Dictionary as a "heavy knife or cutlass, used among Spanish colonists and Spanish American countries, both as a tool and as a weapon," and by Webster as "a large, heavy knife, resembling a broadsword, often two or three feet in length, used by the inhabitants of Spanish America as a hatchet to cut their way through thickets, and for various other purposes."

After leaving Barnegat, the Horsa took the usual course for Jamaica, which follows the Cuban coast for about six hours. The usual color of her funnel was yellow below with red above and black on top, and it was so painted when she left Philadelphia. While she was at sea the funnel was repainted red and black, and when she returned to Philadelphia it was black, red and yellow. The name of the Horsa was painted out amidships, but her name was on the stern in brass letters and on the bow, and those letters were not painted over to the captain's knowledge. About six miles off the coast of Cuba the colored pilot gave orders to disembark. This was about eleven o'clock at night, and the disembarkation was conducted under the supervision of Captain Wiborg, who had the lights of the vessel put out. The two boats were launched which had come on board at Philadelphia and also those which had come with

the lighter, and Captain Wiborg sold the men one of the ship's boats. As one of the boats leaked, another was lowered from the ship. The passengers took to the boats, taking with them all the ammunition and arms they could carry. The steamer then undertook to tow the boats, but a strange light was seen in the distance, and at the request of the men the captain cut the boats loose and started away at full speed. Some forty boxes of cartridges had been left on the Horsa because there was no room for them on the boats, and Captain Wiborg directed that these should be thrown overboard. He said this was to avoid getting into trouble at Port Antonio, since the boxes were not manifested for that port. The Horsa then completed her voyage to Port Antonio. The captain said he told the collector there he had lost two boats, "to put him off his guard."

Defendants' counsel requested the court to give to the jury thirteen points or instructions, of which the fourth, fifth, sixth, seventh, eighth, ninth and eleventh were as follows:

"4. That the laws of the United States and the section under which the defendants are indicted do not prohibit transporting of arms or of military equipments to a foreign country or forbid one or more individuals, singly or in unarmed association, from leaving the United States for the purpose of joining in any military operations which are being carried on between other countries or between different parties in the same country.

"5. That before the jury can find the defendants guilty under this indictment they must first find that there was a 'military expedition or enterprise' against the territory of the King of Spain. A military expedition or enterprise does not exist unless there is a military organization of some kind designated as infantry, cavalry, or artillery, and officered and equipped for active hostile operations.

"6. That if the jury find that there were transported on board of the 'Horsa' arms and men, but the same were not a 'military organization as infantry, cavalry, or artillery, and officered and equipped, or in readiness to be officered and equipped,' then the jury must find the defendants not guilty.

"7. That it is not an offense against the laws of the United States for a shipper to ship arms to a foreign country or for volunteers to go to a foreign country for the purpose of joining in military operations which are being carried on between other countries or between different parties in the same country; in such cases the shipper and volunteer would run the risk, the one of capture of his property, and the other of the capture of his person by the foreign power; but the master of the ship transporting such arms and volunteers, not being a military expedition or enterprise, would not commit any offense against the laws of the United States, and would not be liable under this indictment.

"8. That if the jury find from the evidence in this case that the officers of the steamship Horsa took on board, off the coast of New Jersey, on the high seas, a number of men, all dressed as citizens, without arms and equipments on their persons, and at the same time took on board certain boxes of arms and ammunition and munitions of war, but that the said men were not organized as infantry, cavalry, or artillery or ready for such organization, the jury are instructed that they must find the defendants not guilty, even if the jury believe that the passengers on board intended to enlist, on arrival in Cuba, in the Cuban army.

"9. That if the jury find from the evidence that the defendants took on board their vessel, off the New Jersey coast, a number of men, unarmed and not organized, either as infantry, cavalry, or artillery, and at the same time took on board boxes of ammunition and arms, the jury are instructed that they must find the defendants not guilty, even if the jury should believe that the men intended upon arrival in Cuba to enlist in the Cuban army, and that the boxes of arms were intended for use in the Cuban army."

"11. That if the jury find from the evidence that the passengers and boxes of arms did not constitute a military expedition or enterprise, but that the said passengers were simply going to Cuba to enlist in either army, and the said arms and ammunition were being conveyed to Cuba to be used by either army, then the jury are instructed that the defendants in transporting them in due course of their business committed no offense against the laws of the United States; and the jury are further instructed that all evidence of secrecy, such as taking on the passengers and boxes of arms on the high seas and putting out the lights off the cost of Cuba, were acts which the defendants might lawfully do to avoid the capture of the passengers and the capture of the property from off their ship by Spanish men-of-war; but under such circumstances, if the jury find there was no military expedition or enterprise, such acts would not of themselves be evidence of any intent to violate the statute of the United States under which the defendants are indicted."

The court charged the jury, explaining the indictment, and then continued as follows:

"The evidence heard would not justify a conviction of anything more than providing the means for or aiding such military expedition by furnishing transportation for the men, their arms, baggage, &c. To convict them, you must be fully satisfied by the evidence that a military expedition was organized in this country, to be carried out as and with the object charged in the indictment, and that the defendants, with knowledge of this, provided means for its assistance and assisted it as before stated.

"Thus you observe the case presents two questions: First, was

such military expedition organized here in the United States? Secondly, did the defendant render the assistance stated here with knowledge of the facts?

"In passing on the first question, it is necessary to understand what constitutes a military expedition, within the meaning of the statute. For the purposes of this case, it is sufficient to say that any combination of men organized here to go to Cuba to make war upon its government, provided with arms and ammunition, we being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniforms, or prepared for efficient service, nor that they shall have been organized as, or according to the tactics or rules which relate to, what is known as infantry, artillery, or cavalry. It is sufficient that they shall have combined and organized here to go there and make war on the foreign government, and have provided themselves with the means of doing so. I say 'provided themselves with the means of doing so,' because the evidence here shows that the men were so provided. Whether such provision, as by arming, &c., is necessary need not be decided in this case. I will say, however, to counsel that were that question required to be decided, I should hold that it is not necessary.

"Nor is it important that they intended to make war as an independent body or in connection with others. Where men go without combination and organization to enlist as individuals in a foreign army, they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important."

Taking up defendants' thirteen points, the court disposed of them as follows:

"'1. It is not a crime or offense against the United States, under the neutrality laws of this country, for individuals to leave this country with intent to enlist in foreign military service, nor is it an offense against the United States to transport persons out of this country and to land them in foreign countries when such persons have an intention to enlist in foreign armies.'

"As a general proposition this is true, and the point is affirmed.

"'2. It is no offense against the laws of the United States to transport arms, ammunition, and munitions of war from this country to any other foreign country, whether they are to be used in war or not; that in such case the shipper and transporter of the arms, ammunition, and munitions of war only run the risk of the capture and seizure of such arms and contraband of war by the foreign power against whom they are intended to be used; but this does not make it an offense against the laws of the United States, and for such cause the defendants cannot be held guilty.'

"This is also true. No military expedition would exist in such case.

"'3. That it is no offense against the laws of the United States to transport persons intending to enlist in foreign armies, and arms and munitions of war, on the same ship; that in such case the persons transported and the shipper and transporter of the arms run the risk of seizure and capture by the foreign power against whom the arms were to be used and against whom the persons and passengers intended to enlist; but such cause did not constitute an offense against the laws of the United States, and for such cause the defendants cannot be found guilty.'

"This is true, provided the persons referred to herein had not combined and organized themselves in this country to go to Cuba and there make war on the government. If they had so combined and organized, and yet intended when they reached Cuba to join the insurgent army and thus enlist in its service, and the arms were taken along for their use, they would constitute a military expedition, as before described, and the transportation of such body of persons from this country for such a purpose would be an offense against the statute.

"The fourth, fifth, sixth, seventh, eighth, and ninth points are fully answered by what has been said.

"'10. Even if the jury do find that the men taken on board were an organized military force with officers, as infantry, cavalry, or artillery, the jury cannot find the defendants guilty unless the jury also find that the defendants knew that they were such a military organization as infantry, cavalry, or artillery, constituting a military expedition or enterprise against the kingdom of Spain.'

"As before stated, to justify conviction of the defendants, the jury must be fully satisfied that the defendants knew that the men constituted a military expedition such as I have described.

"The eleventh point has been fully answered by what the court has said.

"The twelfth point is a very important point, and is as follows:

"'12. If the jury find that when the defendants left Philadelphia, and until after they had passed beyond the jurisdiction of the United States, they were ignorant of the fact that they were to transport the men in question, with their arms and provisions, and find that the point off Barnegat where the men in question were taken aboard was beyond the jurisdiction of the United States—in other words, beyond the three-mile limit—and find that the vessel was sailing under a Danish flag, then and in that case they will find the defendants not guilty.'

"This point raises the question whether the defendants committed an offense against the statute, if the only aid which they furnished the expedition was furnished out at sea, beyond the jurisdiction of this country; and I instruct you that if the only aid furnished the vessel, being a foreign vessel, was so beyond our jurisdiction they

did not commit an offense, and must consequently be acquitted. They allege that the point off Barnegat where the men were taken on board was not within three miles of our shore. If this is true, and the defendants did not start from our shore under an agreement to provide the means for transporting and to transport the men, but were ignorant of the object of going to Barnegat until they reached there, they cannot be convicted.

"If, however, they entered into an arrangement here to furnish and provide the means of transportation, and provided it, they are guilty, if this was a military expedition, although the men were not taken aboard and the transportation did not commence until the ship anchored off Barnegat.

"'13. It is the duty of the government to satisfy the jury beyond a reasonable doubt that the men and arms and ammunition taken on board the steamship Horsa was a military expedition or enterprise from the United States against the kingdom of Spain, and also that the defendants knew or shut their eyes to the fact that it was a military expedition or enterprise from the United States against the kingdom of Spain; and if the jury have from the testimony any reasonable doubt upon either of these questions or facts, the jury will find the defendants not guilty.'

"This point is affirmed. I trust the jury understand it. To convict the defendants it is necessary that the government shall have satisfied your minds beyond a reasonable doubt that this was a military enterprise, and that the defendants when they started knew it. Otherwise they are not guilty."

The court then further recapitulated and commented on the evidence, and, in the course of doing so, said:

"Some of them who were able to speak English declared that they were Cubans going to Cuba to fight the Spanish; and if these men were in combination to do an unlawful act, what was said by any of them at the time in carrying out their purpose was evidence against them all as to the nature of the expedition. . . .

"That this was a military expedition designed to make war against the government of Spain would seem to the court to be free from reasonable doubt. The question, however, is one for your determination alone, and I submit it to you as such, reminding you that the responsibility of deciding it rests upon you only. If you find that this was not a military expedition, or, rather, if you are not fully satisfied that it was, your verdict will be for the defendants, without going further. If, on the other hand, you find that it was a military expedition intended to make war against the government of Cuba, then you must pass upon the second question stated, to wit, Did the defendants, with knowledge of the facts, aid in carrying out its purpose in going to Cuba? They transported the men with their arms, ammunition, and provisions. Did they

enter upon this service here with the knowledge of the fact that the men constituted a military expedition, to fight against the government of Cuba? . . . From this and any other testimony bearing on this subject you must determine whether they understood what the expedition and its objects were, and had arranged and provided for its transportation when they left Philadelphia or left our shores within the three mile limit stated. If they were ignorant on this subject until they anchored off Barnegat light, the point being according to the testimony beyond the jurisdictional limits of the United States, no offense was committed, as I have before stated, against the laws of this country.

"The question, therefore, is, Did the defendants understand they were to carry this expedition, and had provided for it and understand what the expedition was before leaving here? As you have seen, they took on two extra boats before leaving, and cleared for Port Antonio, Jamaica, and turned off of their course at the Breakwater (the captain explaining this, to which explanation you will give whatever weight you deem it to be worth). When the men came to the ship off of Barnegat, there is no evidence that the captain or any one of the defendants expressed or exhibited any surprise. It was then manifest that the service required was to carry men and arms to Cuba (the captain says he then so understood it), a most hazardous undertaking. Is it probable that the defendants would have risked themselves and their ship in this service if they had not been prepared for it by previous arrangement, and have done it without demurring or hesitating? Again, is it likely that those in charge of the expedition would have risked bringing the men and the property to that point on the mere chance that the defendants would take the risk of carrying them and the property to Cuba without arranging for it beforehand? If the defendants had refused, as it was their right to refuse, and it would seem certain or at least extremely probable that they would refuse this most hazardous service if previous arrangement had not been made, what would have been the situation of the men and the property? The expedition would have failed. The men would have been subject to arrest, and the property to sacrifice. Is it probable that those in charge of such an enterprise would take the men and property to this point, without having secured certain means of transportation for it in advance? The captain says he was ignorant of the service required of him until he reached the point near Barnegat. You must judge whether he should be believed or not, and from all the evidence must determine whether the defendants left here with knowledge of and provision for what they were about to do.

"I now submit the case to you, reminding you of its importance. If the evidence of the defendants' guilt is not entirely clear, they

should be acquitted. If it is thus clear, they should certainly be convicted. No sympathy or prejudice must be allowed to influence your minds in passing on this case. We have nothing to do with the controversies between the people of Cuba and the government of that island. We are concerned only with the execution of the law in this case. We have only to consider whether the statute to which your attention has been called has been violated. It is our duty to see that the law is honestly and justly executed; that is all. The peace and safety of the community so manifestly depend upon the faithful and honest administration of the law, that no man can fail to see it. We are suffering to-day, as probably no other people suffer, from lawlessness, from mobs, lynch law, murder, violation of trusts, as the result of want of faithfulness in executing the law.

"You will take the case and decide it with a careful regard to the rights of the defendants." 73 Fed Rep. 159.

No motion or request was made that the jury be instructed to find for defendants or either of them.

Defendants excepted "to that part of the charge of the court giving the definition of a military expedition;" to the refusal of the court "to read the points that were not read to the jury," "to affirm all the points without qualification, and "to affirm each point without qualification;" to "the statements of the court that in its opinion this was a military expedition;" and "that the men were armed;" to "the failure of the court to comment on the evidence on behalf of the defendants;" to the statements "of the court in reference to the reasons, motives, purposes, and acts of the defendants;" "that the defendants did not express surprise that the men came on the vessel off Barnegat;" and "that the declarations of the men on the ship to the witnesses for the government were evidence against the defendants; also to the statements "that even if an agreement to furnish and provide the means of transportation was made within the jurisdiction of the United States to carry on a military expedition which was not consummated until they got outside of the three-mile limit, that constitutes no offense against the laws of the United States;" and "that the acts and declarations of the Cubans themselves were evidence against them all as to the nature of the expedition."

The motion in arrest was based on the alleged want of jurisdiction of the court. Errors were assigned to the giving, refusing and qualification of instructions; to the admission in evidence of declarations of some of the party, during the voyage, as to their destination; and to the overruling of defendants' motion in arrest of judgment for want of jurisdiction.

Mr. Chief Justice FULLER delivered the opinion of the Court:

Title LXVII of the Revised Statutes, headed "Neutrality," em-

braces eleven sections, from 5281 to 5291, inclusive. Section 5281 prohibits the acceptance of commissions from a foreign power by citizens of the United States within our territory to serve against any sovereign with whom we are at peace. Section 5282 prohibits any person from enlisting in this country as a soldier in the service of any foreign power and from hiring or retaining any other person to enlist or to go abroad for the purpose of enlisting. Section 5283 deals with fitting out and arming vessels in this country in favor of one foreign power as against another foreign power with which we are at peace. Section 5284 prohibits citizens from the fitting out or arming without the United States, of vessels to cruise against citizens of the United States; and section 5285, the augmenting of the force of a foreign vessel of war serving against a friendly sovereign. Sections 5287 to 5290 provide for the enforcement of the preceding sections, and section 5291, that the provisions set forth shall not be construed to prevent the enlistment of certain foreign citizens of the United States.

Section 5286 is as follows:

"Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years."

This section was originally section five of an act approved June 5, 1794, (1 Stat. 381, c. 50,) carried forward as section six of an act of April 20, 1818, (3 Stat. 347, c. 88,) and differs therefrom in no respect material here. The language of the section closely follows the recommendation of President Washington in his annual address December 3, 1793, when he said: "Where individuals shall . . . enter upon military expeditions or enterprises within the jurisdiction of the United States . . . these offenses cannot receive too early and close an attention, and require prompt and decisive remedies." Annals 1793–95, p. 11. The legislation is historically considered in Dana's Wheaton, § 439, note. The statute was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency. 13 Op. Atty. Gen. 177, 178. Section 5286 defines certain offenses against the United States and denounces the punishment therefor, but, although a penal statute, it must be reasonably construed, and not so as to defeat the obvious intention of the legislature. United States *v.* Lacher, 134 U. S. 624, 628.

The offense is defined disjunctively as committed by every person who, within our territory or jurisdiction, "begins *or* sets on foot, *or* provides *or* prepares the means for, any military expedition *or* enterprise to be carried on from thence."

This indictment charged that defendants did "begin, set on foot, *and* provide *and* prepare the means for a certain military expedition *and* enterprise."

Defendants' counsel did not seek to compel an election, nor in any manner, by their motion in arrest or otherwise, to raise the question of duplicity, nor do they now make objections to the proceedings on this ground. The District Judge instructed the jury that the evidence would not justify a conviction "of anything more than providing the means for or aiding such military expedition by furnishing transportation for their men, their arms, baggage," &c. Under these circumstances, the verdict cannot be disturbed on the ground that more than one offense was included in the same count of the indictment, but it must be applied to the offense to which the jury were confined by the court. Crain *v.* United States, 162 U. S.

We think that it does not admit of serious question that providing or preparing the means of transportation for such a military expedition or enterprise as is referred to in the statute is one of the forms of provision or preparation therein denounced. Nor can there be any doubt that a hostile expedition dispatched from our ports is within the words "carried on from thence." The officers of the Horsa were concerned in providing the means of transportation

1. The first and main question in the present case is whether the trial judge erred in his instructions to the jury in respect of what constitutes a "military expedition or enterprise" under the statute. The question is one of municipal law, and the writers on international law afford but little aid in its solution. They deal principally with the status of belligerents, and the rights and obligations of neutral nations when the existence of such a status is formally recognized or accepted as existing *de facto*.

Calvo defines a military expedition as being an armed enterprise against a country, and he gives the expedition of Xerxes as an illustration. Dict. de Droit Int. verbo, Expedition Militaire.

Professor Lawrence (Prin. Int. Law, 1895, p. 508) is quoted by counsel to the effect that, to constitute a warlike expedition, "it must go forth with a present purpose of engaging in hostilities; it must be under military or naval command; and it must be organized with a view to proximate acts of war. But it need not be in a position to commence fighting the moment it leaves the shelter of neutral territory; nor is it necessary that its individual members should carry with them the arms they hope soon to use. When a belligerent attempts to organize portions of his combatant forces on

neutral soil or in neutral waters, he commits thereby a gross offense against the sovereignty of the neutral government, and probably involves it in difficulties with the other belligerent, who suffers in proportion to his success in his unlawful enterprise."

In Hall's International Law, § 222, it is said: "In the case of an expedition being organized in and starting from neutral ground, a violation of neutrality may take place without the men of whom it is composed being armed at the moment of leaving. . . . On the other hand, the uncombined elements of an expedition may leave a neutral state in company with one another, provided they are incapable of proximate combination into an organized whole."

Boyd in his edition of Wheaton's International Law, § 439*aa*, says: "It is impossible to lay down any hard and fast line separating commercial transactions in munitions of war, and the organizing of hostile expeditions. International law is necessarily incapable of being defined and laid down with the precision attainable by municipal law. The question is one of intent, and it is the duty a neutral government to exercise due diligence in ascertaining what the real character of the transaction may be. The elements of a hostile expedition are thus described by Professor Bernard: 'If at the time of its departure there be the means of doing any act of war,—if those means, or any of them, have been procured and put together in a neutral port,—and if there be the intention to use them (which may always be taken for granted when they are in the hands of the belligerents), the neutral port may be justly said to serve as a base or point of departure for a hostile expedition.' (Montague Bernard, Neutrality of Great Britain, p. 399.)"

But this statute is to be construed as other domestic legislation is, and its meaning is to be found in the ordinary meaning of the terms used. The definitions of the lexicographers substantially agree that a military expedition is a journey or voyage by a company or body of persons, having the position or character of soldiers, for a specific warlike purpose; also the body and its outfit; and that a military enterprise is a martial undertaking, involving the idea of a bold, arduous, and hazardous attempt. The word enterprise is somewhat broader than the word expedition; and although the words are synonymously used, it would seem that under the rule that its every word should be presumed to have some force and effect, the word enterprise was employed to give a slightly wider scope to the statute.

The phrase "military expedition or enterprise" has been variously construed by the district courts, but apparent differences in expression may be largely attibutable to the differences in the facts under consideration in the particular case.

In United States *v.* O'Sullivan, 2 Whart. Crim. Law, § 2802, note, Judge Judson charged the jury that before they could "convict on this indictment, it must be proved to their satisfaction that the

expedition or enterprise was in its character military; or, in other words, it must have been shown by competent proof that the design, the end, the aim, and the purpose of the expedition, or enterprise, was some military service, some attack or invasion of another people or country, state, or colony as a military force. . . . But any expedition or enterprise in matters of commerce, or of business of a civil nature, unattended by a design of an attack, invasion or conquest, is wholly legal, and is not an expedition or an enterprise within this act. . . . The term 'expedition' is used to signify a march or voyage with martial or hostile intentions. The term 'enterprise' means an undertaking of hazard, an arduous attempt."

Judge Maxey in United States *v.* Ybanez, 53 Fed. Rep. 536, concurred in this view and further said: "This statute does not require any particular number of men to band together to constitute the expedition or enterprise one of a military character. There may be divisions, brigades, and regiments, or there may be companies or squads of men. Mere numbers do not conclusively fix and stamp the character of the expedition as military or otherwise. A few men may be deluded with the belief of their ability to overturn an existing government or empire, and, laboring under such delusion, they may enter upon the enterprise. . . . The proof must establish in your minds the fact that the expedition or enterprise was of a military character; and when the evidence shows that the end and objects were hostile to or forcibly against the Republic of Mexico, then it would be, to all intents and purposes, a military expedition. . . . Evidence showing that the end and objects were hostile to or forcibly against a nation at peace with the United States characterizes it, to all intents and purposes, as a military expedition or enterprise."

Judge Brawley in United States *v.* Hughes, not yet reported, applied the test suggested by Mr. Hall as to capability of proximate combination of the uncombined elements of an expedition into an organized whole; and he said in reference to the passengers in that case: "But if after they got aboard they took the arms from the boxes, and organized into a company or organization, if they were drilled or went through the manual of arms under the leadership or direction of one man or more, if they themselves became a military organization by reason of such coming together, and of such drilling or instruction, then from that time forth they would be a military organization or enterprise within the meaning of this statute."

In United States *v.* Pena, 69 Fed. Rep. 983, Judge Wales, and in United States *v.* Hart, not yet reported, Judge Brown, of the Southern District of New York, considered the statute as exacting a high degree of organization, but Judge Brown said: "I do not say that in order to constitute a military expedition to be 'carried on from

this country,' as the statute reads, it must be complete at the start, or possess all the elements of a military body. It is sufficient if there was a combination by the men for that purpose, with the agreement and the intention of the body that embarks that it should become a military body before reaching the scene of action. Such a combination and agreement, if means for effecting it were provided, followed by embarkation in pursuance of the agreement, would show such a partial execution of the design on our soil, as to bring the case within our statute, as 'a military enterprise begun and carried on from the United States.'"

It is argued that as persons are not prohibited from going abroad for the purpose of enlisting in the service of a foreign army; and as the transportation of arms, ammunition and munitions of war from this country to any other foreign country is not unlawful, 3 Whart. Int. Law Dig. § 388 et seq.; The Itata, 15 U. S. App. 1, and authorities cited, therefore no offense was committed in the transportation of these men, the arms and munitions; and reference is made to an opinion of Mr. Secretary Fish on this subject during the Franco-German war of 1870. A statement of that matter is given in Hall's International Law, § 222, and in a letter of Sir Edward Thornton to Lord Granville, dated September 26, 1870, 61 State Papers, 1870–71, p. 822, and elsewhere. It seems to have been an informal communication to the Prussian Minister, who had complained of the fact that the trans-Atlantic steamer Lafayette was carrying a large cargo of arms and ammunitions for sale to the French, while at the same time she was carrying several hundred French passengers, all of whom, as was generally supposed, intended to enlist in the army of France on their arrival. These passengers, however, appear to have been all traveling as individuals without any concert of action, and they had no access to the arms and ammunition any more than an ordinary passenger on an ocean steamer has access to any part of the cargo. Sir Edward Thornton wrote that "Mr. Fish replied to the District Attorney that he was to be guided by the neutrality laws of the United States, and that with regard to the ship it could not be alleged that she was intended for hostile purposes against North Germany. As for the arms and ammunition, they were articles of a legitimate commerce, with which the United States would not interfere, although the vessel might run the risk of being detained by the cruisers of North Germany on her voyage to France."

The District Judge ruled nothing to the contrary and charged the jury in this case that it was not a crime or offense against the United States under the neutrality laws of this country for individuals to leave the country with intent to enlist in foreign military service, nor was it an offense against the United States to transport persons out of this country and to land them in foreign

countries when such persons had an intent to enlist in foreign armies; that it was not an offense against the laws of the United States to transport arms, ammunition and munitions of war from this country to any foreign country, whether they were to be used in war or not; and that it was not an offense against the laws of the United States to transport persons intending to enlist in foreign armies and munitions of war on the same trip. But he said that if the persons referred to had combined and organized in this country to go to Cuba and there make war on the government, and intended when they reached Cuba to join the insurgent army and thus enlist in its service, and the arms were taken along for their use, that would constitute a military expedition, and the transporting of such a body from this country for such a purpose would be an offense against the statute. The judge also charged the jury as follows:

"In passing on the first question, it is necessary to understand what constitutes a military expedition within the meaning of this statute. For the purposes of this case, it is sufficient to say that any combination of men organized here to go to Cuba to make war upon its government, provided with arms and ammunition, we being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, artillery, or cavalry. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, and to have provided themselves with the means of doing so. I say 'provided themselves with the means of doing so,' because the evidence here shows that the men were so provided. Whether such provision, as by arming, and so forth, is necessary need not be decided in this case. I will say, however, to counsel that were that question required to be decided I should hold that it is not necessary.

"Nor is it important that they intended to make war as an independent body or in connection with others. When men go without combination and organization to enlist as individuals in a foreign army, they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important."

It appears to us that these views of the district judge were correct as applied to the evidence before him. This body of men went on board a tug loaded with arms; were taken by it thirty or forty miles and out to sea; met a steamer outside the three-mile limit by prior arrangement; boarded her with the arms, opened the boxes and distributed the arms among themselves; drilled to some extent; were apparently officered; and then, as preconcerted, disembarked to effect an armed landing on the coast of Cuba. The men and the

arms and ammunition came together; the arms and ammunition were under the control of the men; the elements of the expedition were not only "capable of proximate combination into an organized whole," but were combined or in process of combination; there was concert of action; they had their own pilot to the common destination; they landed themselves and their munitions of war together by their own efforts. It may be that they intended to separate when they had reached the insurgent headquarters, but the evidence tended to show that until that time they intended to stand together and defend themselves if necessary. From that evidence the jury had a right to find that this was a military expedition or enterprise under the statute, and we think the court properly instructed them on the subject. This conclusion disposes of most of the errors assigned to the instructions given, qualified or refused. Some of the points requested on defendants' behalf were incorrect; some were covered by the general charge; and others were properly qualified.

2. The second material question is, whether if a military expedition or enterprise was made out, the court erred in its instructions in respect of defendants' knowledge or notice of the facts. And this involves the jurisdictional question which is raised by the exception to the qualification of the twelfth point. In that qualification and elsewhere, the district judge specifically and clearly instructed the jury that although this was a military expedition and enterprise, nevertheless the defendants were not criminally responsible unless they were aware of its nature before they sailed from Philadelphia. "To convict the defendants," said the district judge, "it is necessary that the government shall have satisfied your minds beyond a reasonable doubt that this was a military enterprise, and that the defendants when they started knew it. Otherwise they are not guilty." "The question, therefore, is: Did the defendants understand that they were to carry this expedition, and had provided for it and understand what the expedition was before leaving *here* [Philadelphia]?" It is true that the expedition started in the Southern District of New York, and did not come into immediate contact with defendants at any point within the jurisdiction of the United States as the Horsa was a foreign vessel; but the Horsa's preparation for sailing and the taking aboard of the two boats at Philadelphia constituted a preparation of means for the expedition or enterprise, and if defendants knew of the enterprise, when they participated in such preparation, then they committed the statutory crime upon American soil, and in the Eastern District of Pennsylvania, where they were indicted and tried.

The jurisdictional point was again presented by the motion in arrest, but its disposition calls for no further observations.

We repeat that on the second material question, namely, whether

the defendants aided the expedition with knowledge of the facts, the jury were instructed that they must acquit unless satisfied beyond reasonable doubt that defendants, when they left Philadelphia, had knowledge of the expedition and its objects and had arranged and provided for its transportation. We hold that defendants have no adequate ground of complaint on this branch of the case.

3. An exception was taken to the statement of the court that the men were armed. The court said: "They were armed, having rifles and cannon, and were provided with ammunition and other supplies." This statement was based on uncontradicted testimony, and occurring as it did in a recapitulation of the evidence, no rule of law being incorrectly stated and the matters of fact being specifically submitted to the determination of the jury, we do not regard the exception as tenable. B. & P. R.R. Co. *v.* Fifth Baptist Church, 137 U. S. 568, 574.

4. Objection is also made because the court expressed its opinion that this was a military expedition. But what the court said was that this "would seem to the court to be free from reasonable doubt. The question, however, is one for your determination alone, and I submit it to you as such, reminding you that the responsibility of deciding it rests upon you only. If you find that this was not a military expedition, or, rather, if you are not fully satisfied that it was, your verdict will be for defendants without going further." Clearly the observation of the court thus guarded did not so trespass on the province of the jury as to constitute reversible error. Simmons *v.* United States, 142 U. S. 148, 155.

5. Again, it urged that the court erred, when referring to the captain's testimony that "he was ignorant of the service required of him until he reached the point near Barnegat;" in saying: "You must judge whether he should be believed or not, and from all the evidence must determine whether the defendants left here with the knowledge of, and provision for, what they were about to do." No exception was taken to this part of the charge; but if there had been, we cannot say that the trial judge was not justified in that remark in view of all the facts and circumstances.

Nor was any exception taken to the closing observations by the court as to the importance of faithfulness in the execution of the law, although they are now assigned for error. We see in them nothing which could properly be regarded as prejudicial to the defendants.

6. Other assignments of error relate to the admissibility of declarations of members of the party, during the voyage, as to their destination. One of the witnesses for the prosecution testified on cross-examination "that he had spoken to a couple of those young fellows there, and they said they were going to Cuba." On redirect examination he was asked: "Did they tell you where they were

going?" The answer, which was objected to, was: "They told me they were going to Cuba. They did not say what they were going to do." It was uncontroverted in the case that the party meant to go and did go to Cuba, and the evidence was not material. Another witness for the Government was asked: "Q. Did you have any talk with any of those men? Objected to unless it was in the presence of these defendants. Objection overruled. Exception by defendants. A. Yes, sir. I was going in the forecastle one night and he told us, 'I go down to Cuba to fight.' Q. To fight who? A. The Spanish."

There was no objection to the second question, or to either answer, and no motion to strike out. It does not appear who made the statement or how many persons were present, or that defendants were not present. These assignments are without merit.

There was other evidence of declarations of members of the party as to their purposes, and the district judge in commenting thereon said that: "If these men were in combination to do an unlawful act, what was said by any of them at the time in carrying out their purpose was evidence against them all as to the nature of the expedition," and to this an exception was taken. The general rule was stated in American Fur Co. *v.* United States, 2 Pet. 358, 365, by Mr. Justice Washington, speaking for the court, that "where two or more persons are associated together for the same illegal purpose, any act or declaration of one of the parties, in reference to the common object, and forming a part of the *res gestæ*, may be given in evidence against the others." The declarations must be made in furtherance of the common object, or must constitute a part of the *res gestæ* of acts done in such furtherance. Assuming a secret combination between the party and the captain or officers of the Horsa had been proven, then, on the question whether such combination was lawful or not, the motive and intention, declarations of those engaged in it explanatory of acts done in furtherance of its object came within the general rule and were competent. St. Clair *v.* United States, 154 U. S. 134; People *v.* Davis, 56 N. Y. 102; Lincoln *v.* Claflin, 7 Wall. 132, 139; 1 Greenl. Ev. § 111; Starkie Ev. 466.

The extent to which evidence of this kind is admissible is much in the discretion of the trial court, and we do not consider that that discretion was abused in this instance. Clune *v.* United States, 159 U. S. 590, 592.

7. No motion or request was made that the jury be instructed to find for defendants or either of them. Where an exception to a denial of such a motion or request is duly saved, it is open to the court to consider whether there is any evidence to sustain the verdict, though not to pass upon its weight or sufficiency. And although this question was not properly raised, yet if a plain error

was committed in a matter so absolutely vital to defendants, we feel ourselves at liberty to correct it.

The Horsa was bound for Jamaica, and her course carried her along the coast of Cuba for about six hours. She took on board at Philadelphia two boats entered on the manifest as for Port Antonio, but intended for and ultimately devoted to the use of the party she transported. The captain received at the wharf written instructions, which he did not produce on the trial, and says he did not keep when he left the vessel, but in accordance with which he went north off Barnegat, anchored outside the three-mile limit, and awaited orders. The inference was not unjustifiable that he was thus and then informed that safety required that whatever was to take place off Barnegat should take place beyond the jurisdiction of the United States, in other words, that a transgression of the laws of the United States was contemplated. The Horsa was boarded on the high seas off Barnegat as heretofore described, and the captain testified that he did not regard the occurrence as anything unusual or important. But the fireman said that they went to the chief engineer, when these men came aboard, and told him they would not go along. "We won't go down there and get shot." "We did not sign for that." The chief engineer bade them keep quiet, and the captain "told them if anybody had to hang for this I would be the man to hang for it. I told them they had better go below and mind their own business." The written instructions the captain there received were not produced, but he said he was to take the men and whatever they had and let them off when told to do so, delivering the two boats shipped at Philadelphia, and the two shipped from the tug to them as soon as called for; and that this did not strike him as singular. The evidence shows that the nature of the enterprise was apparent at this time, and the jury may not unreasonably have inferred that the captain received the men and their arms, entered upon the hazards of the voyage, and quieted the complaints of the fireman, with an equanimity springing from a mind previously made up on the subject. We deem it unnecessary to go over the evidence. We cannot say as matter of law that there was no evidence tending to sustain the verdict against the captain.

But we think the case as to Petersen and Johansen stands on different ground, and that we may properly take notice of what we believe to be a plain error, although it was not duly excepted to. These men were the mates of the vessel, and they proceeded on the voyage under the captain's orders. This would not excuse them if there were proof of guilty knowledge or participation on their part in assisting a military expedition or enterprise when they left Philadelphia. We are of opinion that adequate proof to that effect is not shown by the record, and that as the case stood the jury should have

been instructed to acquit them. The captain testified that the mates "had nothing to do with the ship or with its business. They listened to my orders; they were under my orders. I was the master of that vessel. I am responsible for all that was done." The order he received to go north and await orders beyond the three mile limit does not appear to have been communicated to them; and whatever they must have known after the Horsa was boarded off Barnegat, there is nothing sufficiently justifying a presumption of knowledge when the vessel left the wharf.

It is not necessary to enlarge upon the public importance of the neutrality laws. The case is a criminal case arising on an indictment under a section of the Revised Statutes, and we disposed of it on what we deem to be the proper construction of that section, and after subjecting the correctness of the rulings of the court below to that careful examination which the discharge of our duty required.

The judgment against defendant Wiborg is affirmed; the judgment against defendants Petersen and Johansen is reversed, and the cause remanded with instructions to set aside the verdict and grant a new trial as to them.

Mr. Justice HARLAN dissenting:

I concur with my brethren in holding that the judgment against Petersen and Johansen should be reversed, and a new trial ordered as to them.

But I am of opinion that the judgment against Wiborg should also be reversed. It is conceded that the men on the tug were received on board the Horsa at a point off Barnegat which was more than three miles from our shore. It is clear from the evidence that at the time his vessel left Philadelphia, and previous to his receiving those men on board, Wiborg had no knowledge of the purpose for which the charterer ordered him, after he passed the Breakwater, "to proceed north near Barnegat and await further orders." The movements of the vessel were under the control of the charterer. Wiborg was under no legal obligation to inquire from the charterer why the Horsa was ordered to that point, or what were the orders he was likely to receive after arriving there. His duty was to obey the orders of the charterer, unless such orders obviously contemplated a breach of the laws of this country.

The only evidence in the case bearing upon the question whether Wiborg knew, when he left Philadelphia, of any arrangement for his vessel, after it passed beyond the territory and jurisdiction of the United States, to receive men destined for Cuba, was that given by himself. And he distinctly swore that when he started from Philadelphia he did not know that "we were going to take these people and their goods on the Horsa." There was not the slightest ground in the evidence to suppose that he ever

had any communication with those people, or that he ever saw them, before they came on his vessel. Those persons had, of course, arranged with the charterer for passage on the Horsa. But the charterer did not communicate the fact of such an arrangement to the captain of the vessel while he was within the territory and jurisdiction of the United States. The direction that he should receive the men and their goods on board came to him, from the charterer, when he was not within the territory or jurisdiction of the United States. He cannot, therefore, be said to have provided or prepared, "within the territory or jurisdiction of the United States," any means for the expedition or enterprise against the territory or dominion of Spain. Under the interpretation placed upon the statute by the Government, the charterer did provide for such means. But, curiously enough, the charterer was not indicted. The prosecution is against the officers of the vessel, no one of whom, according to the proof, had any knowledge, at the time the Horsa left Philadelphia, nor while it was within the jurisdiction of the United States, that the charterer had arranged that the vessel, after it got beyond the jurisdiction of the United States, should receive on board individuals destined for Cuba, and who intended, after they arrived there, to engage in the struggle to overthrow the authority of Spain in that island.

Independently of the view just expressed, this was not, I think, a military expedition or enterprise within the meaning of the statute. It had none of the features of such an expedition or enterprise. There was no commanding officer, whose orders were recognized and enforced. It was, at most, a small company of persons, no one of whom recognized the authority of another, although all desired the independence of Cuba, and had the purpose to reach that island, and engage, not as a body, but as individuals, in some form, in the civil war there pending—a loose, unorganized body, of very small dimensions, and without any surroundings that would justify its being regarded as a military expedition or enterprise to be carried on from this country.

APPENDIX.

UNITED STATES vs. AUGUSTUS C. RAND ET AL.

Charge of Judge Butler (1883).

This was an indictment against Augustus C. Rand and Thomas Pender, the captaid and mate of the steamer Tropic, for the violation of section 5286 of the Revised Statutes, relating to military expeditions against people at peace with the United States.

The facts are set forth in the charge of the court.

H. P. Brown, Asst. Dist. Atty., and J. K. Valentine, Dist. Atty., for the United States.

Alfred & Arthur Moore, for defendants.

Butler, J. (charging jury). On the fifteenth day of March last the ship Tropic sailed from this port in command of the defendants—the one as captain and the other first mate—with a cargo of arms and military stores, consisting of rifles, muskets, cannon, cutlasses, ammunition, and uniforms. She proceeded direct to Inagua, where she arrived on the twenty-second of the same month, and during the night and the next day, took on board a large number of men, who were soon after put into uniforms, drilled, and prepared for active military service. She then proceeded to Miragoane, Hayti, where the men were disembarked, and an attack made upon the representatives of the Haytian government, there in command, and the town captured. During the attack the vessel rode outside the harbor, and immediately after ran in and landed her stores. On the return of the ship to this port the defendants were arrested, and are now on trial for an alleged violation of a statute of the United States, which reads as follows:

"Every person who, within the territory or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor."

That the attack upon and capture of Miragoane was the result of a military *expedition*, is clear. Was it begun or set on foot within the territory of the United States, to be carried on from thence, or the means here provided for such an expedition? As we have seen, the arms, military stores, and means for the transportation of them, and of the men subsequently taken on board, were here provided and started out. That the men were not taken on board until the vessel reached Inagua, is not, in the judgment of the court, material. The expedition, as it left this port, viewed in the

light of subsequent events—(the shipping of the men at Inagua, and the attack upon Miragoane)—was, in the judgment of the court, a *military enterprise*, within the terms and spirit of the statute,—a military enterprise *begun or set on foot within the territory* of the United States, *to be carried on from thence*. To enter upon a critical, abstract definition of the statute, here, would serve no useful purpose. The signification of its terms, in the aspect now involved, is sufficiently defined by what has been said. I repeat, the expedition which sailed from this port as described by all the testimony in the cause, was a *military expedition*, within the scope of the statute. The language—"to be carried on from thence"—is employed in the sense of *carrying out*, or *forward* from thence.

The only controverted question of fact for your determination, therefore, is, were these defendants, or was either of them, connected with it, with knowledge of the circumstances, and with design to promote it? That they commanded the vessel, took out the arms, stores, and men, and landed them at the place of attack, is undisputed. Their defense is that they were ignorant of the enterprise; that they did not know what the cargo consisted of; that when the men were shipped they were supposed to be passengers; and that all the defendants subsequently did was the result of coercion. If that is true, it is a complete defense. Is it true? The defendants appeared before you as witnesses, and swore to it, circumstantially and in detail as you heard. The engineer and the second mate, who bears the same name as one of the defendants, were called to prove the alleged coercion. You heard their testimony,—the statement that the captain appeared anxious to get away without landing the stores, etc.,—and must judge what weight this testimony is entitled to. Other witnesses testified that the captain exhibited alarm towards the close of his voyage, as the expedition neared its destination, and that he then declared his ignorance of its purpose at starting. What weight should be attached to these declarations, and to this exhibition of alarm, you must judge. Whether such alarm is inconsistent with a belief that he was aware of the character of the enterprise from the start, you will consider. The instances are probably rare in which men carry out to the end hazardous enterprises involving property and life—even where most deliberately entered upon—without temporary moments of hesitation and alarm. In the light of surrounding circumstances, is the defense (that the defendants were ignorant of the character of the expedition, and were not intentionally connected with it at the time of starting out,) probable and credible? As you have been informed, the clearing of the ship here was irregular. The cargo was put on board in the manner stated by the witnesses, and the vessel sailed without making the usual entry at the custom-house. The captain appears to be a man of experience and intelligence. His failure of duty in this respect

is, therefore, somewhat remarkable, if he was ignorant of the character of his cargo. You will judge whether his explanation (if what he says may be called an explanation) is satisfactory. Notwithstanding the cargo was destined for Port Antonio, he went to Inagua, where he arrived about ten o'clock, and remained until the next morning, taking on board during the night a large number of men. You heard his explanation of this: that he was directed, on leaving this port, to touch at Inagua for orders, and that in taking the men on board he was obeying the orders there received. Is this explanation probable? The ship was not fitted out for the transportation of passengers, and, as he tells you, he knew that it was unlawful to carry them, in its condition. After starting out from Inagua, and returning with the steamer Alva, which he met, and being informed from the British man-of-war, lying near by, that he would not be permitted to take the additional large number of passengers which he desired to carry to Miragoane, he ran out to sea some fifteen miles, and lay there in the night, with his lights down, awaiting the arrival of these passengers, in pursuance of an arrangement that they should be brought to him at that place. He tells you that his lights were down because he was coerced into removing them; but in view of the fact that he was seeking to carry the men away against the orders of the man-of-war, and was manifestly lying where he was with the design to take them without discovery, you will judge whether the removal of his lights was not consistent with, and in furtherance of, this purpose; and whether, therefore, his statement that he was coerced into removing them is worthy of belief. You now find him at Inagua, with his cargo for Port Antonio, his vessel crowded with men, voluntarily taken on board,—a vessel unsuited to the carriage of passengers, and on which it was unlawful to carry them. He says he did not know why he was forbidden to carry the men to Hayti. You will judge, however, whether he did not understand that it was because the public peace there would be jeopardized by his doing so, and whether, therefore, he did not understand the character and purpose of these men when he voluntarily took them on board. Thence he started to Miragoane. He tells you that he now, or soon after, discovered the character of the expedition, and all that he subsequently did was the result of coercion. The men and stores were taken to Miragoane, and there put ashore in the manner and under the circumstances described by the witnesses. No fare or freight was paid or demanded. Although the American consul at Miragoane was seen and communicated with, no complaint appears to have been made, nor redress sought, for the alleged outrage upon the vessel; nor was any complaint made elsewhere subsequently; nor was the transaction reported to the consignors of the cargo, or the owners of the vessel, prior to the arrest. In the light of these circumstances, and of all the testimony bearing upon the question, do you believe that the defendants did not know the

character of their cargo, and were not aware of the intended attack on Hayti, on leaving this port? If you do so believe, you must acquit them; and it will, no doubt, in such case be a pleasure to do so. On the other hand, if you believe they were aware of the character of the cargo, and started out for the purpose of carrying it, and the men subsequently taken on board, to Hayti, for the purpose of making the attack afterwards made there, you should convict them. The defendants are entitled to the benefit of any reasonable doubt you have on the subject. The case is an important one, and deserves your most serious consideration. The statute involved is founded in a wise and beneficent purpose—the discharge of an important national duty towards other friendly powers; and its violation involves the national honor as well as the public peace.

You will bear in mind that you may convict one of the defendants and acquit the other, or convict or acquit both, as your judgments dictate.

UNITED STATES vs. J. H. S. WIBORG ET AL.

Charge of Judge Butler (1896).

Gentlemen of the Jury: The defendants having been at the time in question officers of the ship Horsa, the first as captain and the others as mates, are indicted jointly and separately, in which indictment it is charged that within the territory and jurisdiction of the United States they did organize and set on foot and provide and prepare the means for a certain military expedition and enterprise to be carried on from thence against the territory and dominions of a foreign prince, to wit, the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being at peace with the said King, contrary to the act of Congress in such case made and provided.

The evidence heard would not justify a conviction of anything more than providing the means for or aiding such military expedition by furnishing transportation for the men, their arms, baggage, &c. To convict them you must be fully satisfied by the evidence that a military expedition was organized in this country to be carried out as and with the object charged in the indictment, and that the defendants, with knowledge of this, provided means for its assistance and assisted it as before stated.

Thus you observe the case presents two questions: First, was such military expedition organized here in the United States? Secondly, did the defendants render the assistance stated here with knowledge of the facts.

In passing on the first question it is necessary to understand what constitutes a military expedition within the meaning of the statute. For the purposes of this case it is sufficient to say

that any combination of men organized here to go to Cuba to make war upon its government, provided with arms and ammunition, we being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniforms, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, artillery, or cavalry. It is sufficient that they shall have combined and organized here to go there and make war on the foreign government, and have provided themselves with the means of doing so. I say provided themselves with the means of doing so because the evidence here shows that the men were so provided. Whether such provision, as by arming, &c., is necessary need not be decided in this case. I will say, however, to counsel that were that question required to be decided I should hold that it is not necessary.

Nor is it important that they intended to make war as an independent body or in connection with others. Where men go without combination and organization to enlist as individuals in a foreign army they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important.

I have said more on this subject than the facts of this case require simply because of the numerous points presented by the defendants, on which the court is asked to charge. These points I will now dispose of. The court is asked to say:

"1. It is not a crime or offense against the United States under the neutrality laws of this country for individuals to leave the country with intent to enlist in foreign military service, nor is it an offense against the United States to transport persons out of this country and to land them in foreign countries when such person has an intent to enlist in foreign armies."

As a general proposition this is true, and the point is affirmed.

"2. It is no offense against the laws of the United States to transport arms, ammunition, and munitions of war from this country to any other foreign country, whether they are to be used in war or not; that in such case the shipper and transporter of the arms, ammunitions, and munitions of war only runs the risk of capture, seizure, &c."

This is also true. No military expedition would exist in such case.

"3. It is no offense against the laws of the United States to transport persons intending to enlist in foreign armies and munitions of war on the same trip; that in such case the persons transported and the shipper and the transporter of the arms and munitions of war only takes the risk," &c.

This is true, provided the persons referred to herein had not combined and organized themselves in this country to go to Cuba

and there make war on the government. If they had so combined and organized and yet intended when they reached Cuba to join the insurgent army and thus enlist in its service and the arms were taken along for their use, they would constitute a military expedition, as before described, and the transportation of such body of persons from this country for such a purpose would be an offense against the statute.

The fourth, fifth, sixth, seventh, eighth, and ninth points are fully answered by what has been said.

"10. Even if the jury do find that the men taken on board were an organized military force with officers, as infantry, cavalry, or artillery, the jury cannot find the defendants guilty unless the jury also find that the defendants knew that they were such a military organization as infantry, cavalry, or artillery, constituting a military expedition or enterprise against the Kingdom of Spain."

As before stated, to justify conviction of the defendants the jury must be fully satisfied that the defendants knew that the men constituted a military expedition such as I have described.

The eleventh point has been fully answered by what the court has said.

The twelfth point is a very important point and is as follows:

"12. If the jury find that when the defendants left Philadelphia and until after they had passed beyond the jurisdiction of the United States they were ignorant of the fact that they were to transport the men in question with their arms and provisions, and find that the point off Barnegat, where the men in question were taken aboard, was beyond the jurisdiction of the United States—in other words, beyond the three-mile limit—and find that the vessel was sailing under a Danish flag, then and in that case they will find the defendants not guilty."

This point raises the question whether the defendants committed an offense against the statute if the only aid which they furnished the expedition was furnished out at sea, beyond the jurisdiction of this country, and I instruct you that if the only aid furnished the vessel, being a foreign vessel, was so beyond our jurisdiction they did not commit an offense, and must consequently be acquitted. They allege that the point off Barnegat where the men were taken on board was not within three miles of our shore. If this is true and the defendants did not start from our shore under an agreement to provide the means for transporting and to transport the men, but were ignorant of the object of going to Barnegat until they reached there, they cannot be convicted.

If, however, they entered into an arrangement here to furnish and provide the means of transportation, and provided it, they are guilty, if this was a military expedition, although the men were not taken aboard and the transportation did not commence until the ship anchored off Barnegat.

"13. It is the duty of the Government to satisfy the jury beyond a reasonable doubt that the men and arms and ammunition taken aboard the steamship Horsa was a military expedition or enterprise from the United States against the Kingdom of Spain, and also that the defendants knew or shut their eyes to the fact that it was a military expedition or enterprise from the United States against the Kingdom of Spain, and if the jury have from the testimony any reasonable doubt upon either of these questions of fact the jury will find the defendants not guilty."

This point is affirmed. I trust the jury understand it. To convict the defendants it is necessary that the Government shall have satisfied your minds beyond a reasonable doubt that this was a military enterprise, and that the defendants when they started knew it. Otherwise they are not guilty.

Now, did the men taken on board the Horsa off Barnegat constitute a military expedition? In other words, had they combined, organized, and armed themselves to go to Cuba and there make war on its government? A rebellion is, and was at the time, in progress in that country. The evidence justifies the conclusion that the men were principally Cubans. They came on board the vessel in a body and appeared to be acting in concert under an organization or understanding of some description. They were armed, having rifles and cannon, and were provided with ammunition and other supplies. Some of them who were able to speak English declared that they were Cubans going to Cuba to fight the Spanish, and if these men were in combination to do an unlawful act what was said by any of them at the time in carrying out their purpose was evidence against them all as to the nature of the expedition. When the vessel reached the coast of Cuba they lowered boats, which had been taken along on their account and for their use, got into them with their arms, ammunition, and other provisions, and left the ship, which had undertaken to tow them some distance further, but was frightened off by the appearance of a light which was supposed to be that of a Spanish man-of-war.

That this was a military expedition designed to make war against the government of Spain would seem to the court to be free from reasonable doubt. The question, however, is one for your determination alone, and I submit it to you as such, reminding you that the responsibility of deciding it rests upon you only.

If you find that this was not a military expedition, or, rather, if you are not fully satisfied that it was, your verdict will be for the defendants without going further. If, on the other hand, you find that it was a military expedition intended to make war against the government of Cuba, then you must pass upon the second question stated, to wit, Did the defendants, with knowledge of the fact, aid in carrying out its purpose of going to Cuba? They transported the men with their arms, ammunition, and provisions. Did they

enter upon this service here with knowledge of the fact that the men constituted a military expedition, to fight against the government of Cuba?

I will not dwell on the evidence relating to this question. It has been very fully stated and commented upon by counsel. You will consider the circumstances under which the defendants started from this port, taking extra boats, clearing for Port Antonio, Jamaica, turning off of their course at the breakwater (at the mouth the Delaware) going to Barnegat, and there taking a large body of men with arms concealed in boxes, and provisions on board, together with two additional boats under orders to put the men off with their boats, arms, and provisions where they might request. The defendants took them down to the coast of Cuba, extinguishing all lights about the ship as she approached, and there launched the boats and set the men with their arms and provisions adrift to reach the shore somewhere, abandoning the undertaking to tow them further down, and hurrying away because of the appearance of a supposed Spanish man-of-war.

Thus you see what the defendants did. From this and any other testimony bearing on this subject you must determine whether they understood what the expedition and its objects were, and had arranged and provided for its transportation when they left Philadelphia or left our shores within the three-mile limit stated. If they were ignorant on this subject until they anchored off Barnegat light, the point being according to the testimony beyond the jurisdictional limits of the United States, no offense was committed, as I have before stated, against the laws of this country.

The question, therefore, is, Did the defendants understand they were to carry this expedition, and had provided for it and understand what the expedition was before leaving here? As you have seen, they took on two extra boats before starting and cleared for Port Antonio, Jamaica, and turned off of their course at the breakwater (the captain explaining this, to which explanation you will give whatever weight you deem it to be worth). Whe the men came to the ship off Barnegat there is no evidence that the captain or any one of the defendants expressed or exhibited any surprise. It was then manifest that the services required was to carry men and arms to Cuba (the captain says he then so understood it), a most hazardous undertaking. Is it probable that the defendants would have risked themselves and their ship in this service if they had not been prepared for it by previous arrangement, and have done it without demurring or hesitating? Again, is it likely that those in charge of the expedition would have risked bringing the men and the property to that point on the mere chance that the defendant would take the risk of carrying them and the property to Cuba without arranging for it beforehand? If the defendants had refused, as it was their right to refuse, and it would

seem certain or at least extremely probable that they would refuse this most hazardous service if previous arrangement had not been made, what would have been the situation of the men and the property? The expedition would have failed. The men would have been subject to arrest and the property to sacrifice. Is it probable that those in charge of such an enterprise would take the men and property to this point without having secured certain means of transportation for it in advance? The captain says he was ignorant of the service required of him until he reached the point near Barnegat. You must judge whether he should be believed or not, and from all the evidence must determine whether the defendants left here with knowledge of and provision for what they were about to do.

I now submit the case to you, reminding you of its importance. If the evidence of the defendants' guilt is not entirely clear, they should be acquitted. If it is thus clear, they should certainly be convicted. No sympathy or prejudice must be allowed to influence your minds in passing on this case. We have nothing to do with the controversies between the people of Cuba and the government of that island. We are concerned only with the execution of the law in this case. We have only to consider whether the statute to which your attention has been called has been violated. It is our duty to see that the law is honestly and justly executed; that is all. The peace and safety of the community so manifestly depend upon the faithful and honest administration of the law that no man can fail to see it. We are suffering to-day as probably no other people suffer from lawlessness, from mobs, lynch law, murder, violation of trusts, as the result of want of faithfulness in executing the law.

You will take the case and decide it with a careful regard to the rights of the defendants.

UNITED STATES vs. JOHN D. HART.

Charge of Judge Butler (1897).

Butler, J. Gentlemen of the jury: The trial of this case has occupied a good deal of time. No more, however, in the judgment of the court than its importance and the numerous facts involved required. It has been well and ably tried by counsel on both sides, and, what is equally agreeable to the court, it has been tried in excellent temper. I would be glad if I could submit it to you without further detention, but the numerous points presented will necessitate the expenditure of a greater length of time in submitting it to you than the court usually occupies. I bespeak your very earnest attention.

The defendant is indicted under Section 5286 of the Revised Statutes of the United States, which reads as follows:

"Every person who within the territory or jurisdiction of the United States begins or sets on foot or provides or prepares the means for any military expedition or enterprise to be carried on from thence against the territory or dominion of any power, prince or state or of any colony, district or people with whom the United States are at peace, shall be deemed guilty of a high misdemeanor."

As you observe, the statute creates two offenses, the one setting on foot, within the United States, a military expedition; and the other, providing means for it, as, for instance, means for transportation. Although the defendant is indicted for both offenses, the Government is pressing a conviction of the latter only. The case is thus simplified. To justify a conviction it must be proved that a military expedition was organized in this country; and that the defendant provided means here, in Pennsylvania, for assisting it on its way to Cuba, as charged, with knowledge that it was such an expedition. Thus you see two questions are presented for consideration, first, was such an expedition organized in this country? Second, did the defendant provide means for it, with knowledge of the facts as charged?

In passing on the first question it is necessary that you shall understand what constitutes a military expedition, within the meaning of the statute. For the purposes of this case it is sufficient to say that any combination of men organized here, in this country, to go to Cuba and make war upon its government, provided with means, with arms and ammunition (this country being at peace with Cuba), constitutes a military expedition. It is not necessary that the men shall have been drilled, or put in uniform, or prepared for efficient service, nor that they shall have been organized according to the regulations which ordinarily govern armies. It is sufficient that they shall have combined and organized in this country as a body, to go abroad, and as such make war on the foreign government, having provided themselves with means to do so. If they have thus combined and organized it is not necessary that the arms shall be carried upon their persons here, or on their way; it is sufficient that arms have been provided for their use when occasion requires. It is unimportant that the organization is rudimentary, imperfect, and inefficient; it is enough to meet the requirements of the statute that the men have united and organized with the purpose and object stated; voluntarily agreeing to submit themselves to the orders of such person or persons as they have selected. In the nature of things the organization must be voluntary and imperfect. Obedience to leaders or officers selected here, could not be enforced. The men would be subject to no legal obligation and could not be compelled to obey—at least until the expedition has left our shores, and the circumstances have become such that they

are no longer free agents, but for want of legal protection have become subject to the will of such leaders, supported by the majority of their fellows. Nor is it important whether the expedition intends to make war as an independent body or in combination with others in the foreign country. If men go, without such combination and organization, to volunteer as individuals in a foreign army, they do not constitute a military expedition organized here; and the fact that the vessel carrying them under such circumstances, also carries arms as merchandise, is not important.

The defendant has asked the court to charge you as follows:

"1. It is entirely lawful for any number of men to leave the United States together, with intent to go to Cuba and there join the Cuban army and fight against the Spanish Government, provided the men do not in the United States combine and organize themselves into a military body under some leadership for that purpose, and are not supplied with arms and ammunition or munitions of war for their own personal use; and the transportation of such body of men, knowing their intention, does not constitute any offense within the meaning of our statute."

This point is fully answered by what I have already said. It is lawful for men, many or few, to leave this country with intention to volunteer in the Cuban army, provided they have not combined and organized in this country, as previously described, and the transportation of such individuals would not constitute an offense against the statute.

"2. It is no offense against the laws of the United States to transport arms and ammunition or munitions of war to Cuba, whether they are to be used in war against the Spanish Government or not; and it is no offense to transport such arms and munitions of war to Cuba, for the use of the Cuban army against the Spanish Government, and with the intention thereby to aid and assist the Cuban army."

This is affirmed. Although a part of the statement of the point may be open to question, the circumstances of this case do not call for questioning it, and it is therefore affirmed as written.

"3. It is no offense against the laws of the United States to transport persons intending to enlist in the Cuban army to fight against the armies of the King of Spain, and upon the same ship to transport arms and munitions of war carried in boxes as merchandise, provided such persons do not in the United States combine and organize themselves under some military leadership for that purpose, and provided the arms and ammunition so transported are not intended for their use, and the intention of the men to enlist when they get to Cuba would not make unlawful an expedition which is otherwise lawful."

This point is affirmed, reminding you, in this connection, of the

importance of remembering the court's previously stated definition of the term "military expedition."

"4. Even if the jury find from the evidence that the men who were on board the "Laurada" did go to Cuba, and did land there the arms and ammunition that had been on board that vessel, yet, if their intention was to land the arms rather than use them, the defendant cannot be convicted as indicted unless he knew that the men intended to fight with the arms against the Spanish Government."

This contains nothing that is not covered by what has been said. I will repeat, however, that the defendant cannot be convicted, unless it is proved that when he started the "Laurada" out from Philadelphia (if he did start her out) that the expedition was military, such as I have described. Taking arms to, and landing them in, Cuba, is not of itself an offense against our laws.

"5. If the jury find from the evidence that the men who came on board the "Laurada" acted as porters or stevedores to handle the arms and ammunition in the packages on the voyage, or to transport the packages on shore, even if those men had the intention of ultimately joining the Cuban army, the defendant must be acquitted."

This point is fully answered by what has been already said. Of course, if the men did not go organized to fight, but simply to handle and land the cargo of arms and other stores, they did not constitute a military expedition.

"6. It is the duty of the Government to prove, beyond a reasonable doubt, that the men taken on board the 'Laurada' had previously combined and organized themselves into a military body, for the purpose of going to Cuba to join the Cuban army and fight against the Spanish Government, and that the arms aud ammunition were not merely merchandise intended for some other person, but were to be used by the very same men who were on board the 'Laurada' for the purpose of making war in Cuba against the Spanish Government, and that the defendant, knowing the expedition to be an unlawful one, did, in the Eastern District of Pennsylvania begin it, or set it on foot or provide or prepare the means for it; and if the Government has failed to prove any of these facts conclusively to the satisfaction of the jury, and beyond a reasonable doubt, the jury must find the defendant not guilty."

While I doubt the accuracy of this point in one or two particulars, I affirm it, nevertheless, in view of the facts of this case, or rather the evidence, and direct the jury to follow it, bearing in mind, however, that if the men had organized in this country to go to Cuba and fight, a strong presumption arises that the arms taken along were taken for their use, to the extent they needed arms, in the absence of evidence to the contrary.

"7. Even if the jury should find that this was a military expedition they must also find before they can convict the defendant that he knew of its illegal character at the time the 'Laurada' sailed from this district; and the fact that the defendant had some connection with the 'Laurada,' either as agent for the owner, or its charterer, or as president of the J. D. Hart Company, would not be sufficient and conclusive evidence of guilt as to warrant his conviction."

All that is material in this point, and can be affirmed, has been answered, and will, no doubt, be answered again in the course of the charge.

"8. The mere fact that the defendant knew that men and arms were to be taken on board the 'Laurada,' both to be carried together to the island of Navassa, is not sufficient to convict him, and the transportation of the men and the transportation of the arms and ammunition in boxes, from one point in the United States to the island of Navassa, which is another point within the jurisdiction of the United States, is not a violation of law."

Everything stated in this point which should be affirmed, is fully covered by what has already been said. I will, however, repeat here that if the defendant had knowledge that the expedition was unlawful, as charged, and he provided the means here, in this district, to carry it to Navassa, on its way to Cuba, knowing that the latter was its destination, he is guilty of the offense charged. It is not necessary that he should provide the means for carrying it to Cuba. If he provided means for carrying it any part of the journey, with knowledge of its destination and of its unlawful character, he is guilty.

"9. Even if the defendant knew that these men and these arms were to go to, or be transhipped at Navassa, that does not raise a presumption that the defendant knew that they were to be taken from thence to Cuba, and were to be used by these men to fight against the Spanish Government."

I do not find anything in this point that has not been sufficiently answered. Of course, as before stated, it is necessary to prove that the defendant had knowledge that the expedition was military and was going to Cuba to justify a conviction.

"10. There is no evidence whatever that the defendant provided or prepared the means for transhipping the men and arms from Navassa to Cuba, and transporting the men and arms to Navassa alone, is not a violation of the statute. To convict the defendant the jury must believe beyond all reasonable doubt that the defendant actually knew that the arms and ammunition were to go together to Cuba, and that the men intended to use the arms to fight against Spain."

This point has been fully answered in so far as it can be affirmed.

"11. Secrecy and mystery in the departure of the 'Laurada,' in

the placing of the men upon her, of the arms upon her, and her avoiding other vessels, and taking a circuitous route to Navassa, are not of themselves evidences of criminality and are just as consistent with a lawful as with an unlawful enterprise, and are not inconsistent with the mere landing of contraband of war upon the island of Cuba—a thing not against the laws of the United States."

The subject involved in this point is one for the jury alone. It has been fully discussed by counsel on both sides, and the jury must pass upon the weight that should be given to the circumstances here referred to. The point does not present a question of law for the court, but one of fact, that has been fully considered by counsel, and must be passed upon by the jury. As the jury has observed, the defendant contends that the evidence here invoked by the Government justifies a belief that the object of the expedition was simply to carry arms to Cuba, not a military expedition, which would be an offense against the laws of this country, though the cargo would be contraband of war and liable to confiscation there. The defendant's counsel argues that all the suspicious circumstances cited by the Government are as consistent with that supposition as with the charge of the Government that this was a military expedition. The matter is one of fact for you and not for the court.

"12. The defendant is entitled to all reasonable presumption in his favor; and if the jury find that all the evidence and circumstances relied on by the Government to show guilt, when taken together, are as compatible with the theory of innocence, as with the theory of guilt, it would constitute a situation of reasonable doubt, and the jury should find the defendant not guilty."

This is true. The point is affirmed. If all the circumstances cited by the Government in this connection are as consistent with a belief of innocence as they are with the Government's position and charge of guilt, of course you would necessarily disregard them. There must be a clear preponderance of inference from these circumstances against the defendant to entitle them to consideration. Where the circumstances of a case are as consistent with a presumption of innocence these circumstances cannot be used as evidences of guilt. That is true as a legal proposition, but it will be for you to say whether the circumstances referred to and in part relied upon by the Government, the circumstances of suspicion and secrecy, are as consistent with a belief of innocence in the prisoner as a belief of guilt.

"13. The defendant is entitled to the benefit of all doubt or doubts arising from the evidence or from the application of the law to the evidence, and if such doubt arises or exists in the minds of the jurors, it is their duty to find the defendant guilty."

This seems to add nothing to the point just read, and is affirmed. That is no more than saying that the Government must make out

a clear case. Not a case that is proved beyond possibility of mistake, because no case is ever so proved, but a case that thoroughly satisfies the mind of the jury. It means that and nothing more. If the jury is not fully satisfied, but doubts, the prisoner is always entitled to the benefit of the doubt and must be acquitted. Where the minds of the jury are convinced, there is no doubt such as the law recognizes, and in such case it is the duty of the jury to convict.

"14. Under all the facts and circumstances and evidence in the case, the jury must find the defendant not guilty."

I disaffirm that point.

To avoid misunderstanding, which might arise from reading the numerous points, I will repeat what I said at the outset respecting the law:

To justify a conviction it must be proved that a military expedition was organized in this country; and that the defendant provided means here, in Pennsylvania for assisting it on its way to Cuba, as charged, with knowledge that it was such an expedition. Thus you see two questions are presented for consideration, first, was such an expedition organized in this country? Second, did the defendant provide means for it with knowledge of the facts as charged?

In passing on the first it is necessary that you shall understand what constitutes a military expedition within the meaning of the statute. For the purposes of this case it is sufficient to say that any combination of men, organized here in this country, to go to Cuba, and make war upon its government, provided with means (with arms and ammunition), this country being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall have been drilled, or put in uniform, or prepared for efficient service, nor that they shall have been organized according to the regulations which ordinarily govern armies. It is sufficient that they shall have combined and organized in this country as a body, to go abroad, and as such make war on the foreign government, having provided themselves with means to do so. If they have thus combined and organized it is not necessary that the arms shall be carried upon their persons here, or on their way; it is sufficient that arms have been provided for their use, when occasion requires. It is unimportant that the organization is rudimentary, imperfect and inefficient; it is enough to meet the requirements of the statute that the men have united and organized with the purpose and object stated; voluntarily agreeing to submit themselves to the orders of such person or persons as they have selected.

Your first inquiry therefore will be, was the expedition which was taken on board the "Laurada" off Barnegat, and carried to Navassa Island, in sight of Cuba, a military expedition, within the meaning of these terms, as I have defined them, set on foot in this country, to make war against the government of Cuba? That

the destination of the expedition was Cuba does not seem open to reasonable doubt, though this as well as all other facts in the case, must be decided by you. The people of the island of Cuba, or a part of them are engaged in war against their government. Several of the men composing the expedition said, if the evidence is believed, and that, of course, is for you, that Cuba was their destination, and that they were going there to fight the Spanish; and when transferred to the "Dauntless" at Navassa they went in that direction. The men, according to the testimony, were principally Cubans. Was the expedition, however, military, such as I have instructed you the statute contemplates? In other words, had the men combined and organized before leaving this country, and provided themselves with arms, as before described for the purpose of going to Cuba to make war against the government? They came to the "Laurada" in a body, apparently acting from a common impulse as by preconcert. The arms and other military stores came at the same time, though from New York. The men immediately went to work, transferring the arms, ammunition and other military stores, from the schooner on which they came to the "Laurada," under the orders of one or more of their number. On the way to Navassa they continued to work about this cargo, opening boxes, assorting ammunition and making sacks from canvass brought for the purpose, as the witnesses described, under the orders of Captain Sutro, who, the witnesses say, conferred with and received orders, or appeared to receive orders, from General Roloff. When approaching Navassa, three of the men, wishing apparently to desert, if the testimony is believed, and that is a question for you, withdrew from the others and hid themselves in a part of the ship where they supposed discovery might be avoided, whereupon, as I understand the testimony, and you will judge whether I am right or not, General Roloff had them sought for, brought out and sent upon the "Dauntless" with the other members of the expedition. If this latter statement, respecting the desertion of these men, or attempted desertion, hunting them up, bringing them out, and requiring them to go, is true (and you must judge whether it is or not), it shows that the men were not at that time, at all events, free agents, but were subject to orders which they could not disobey. From these circumstances and from all the evidence bearing on the subject, you must determine whether the men had combined and organized as I have described, in this country, to go to Cuba as a body and fight, or were going as individuals subject to their own wills, with intent to volunteer in the insurgent service there, if they should see fit to do so, on arriving there. You must judge from the evidence whether the men had combined, organized and consented to the government of one or more of their number here in this country, to go to Cuba, and make war there upon the Spanish Government, or whether they were going individually, each on his own

account, with liberty to volunteer or not, as they saw fit, when they reached Cuba.

If you do not find that they had so combined and organized before leaving this country, then they did not constitute a military expedition, and the defendant must be acquitted. If, on the contrary, you find that they had so combined and organized in this country, you must next determine whether the defendant provided means for their transportation, not the whole way, but to Navassa. It is not necessary that he should transport them to Cuba, as I have said; if he provided means for their transportation to Navassa on their way to Cuba, and made this provision here, in Pennsylvania, with knowledge of the character of the expedition and of its destination, he is guilty. The transportation was made by the "Laurada." That is an undisputed fact. That somebody here provided her for this service seems clear, though this question, as other questions of fact, I repeat, is for you. It seems to be beyond room for controversy that somebody here provided the "Laurada" for that service, and provided her with stores and extra boats. I say it appears so to the court, but still you are not bound by what the court thinks of the evidence. The fact is for you. She started from the port of Philadelphia, taking on here, if the witnesses are believed, an unusual supply of coal for her alleged voyage, and an unusual supply of other stores. After clearing for San Antonio, she surrendered this clearance, taking another for a coastwise trip to Wilmington; and upon her arrival there immediately took a clearance for Port Antonio again. After passing down the river twenty miles further, she anchored and awaited the arrival of small boats brought down from Camden, on an order given in Philadelphia. She then proceeded to the Breakwater and out to sea; but instead of going on a direct course to San Antonio she turned northward and went to the point off Barnegat, where she took on the men, arms, ammunition, and other military stores before alluded to. She then proceeded, by the route described, to Navassa, where she transferred the men and other cargo to the "Dauntless," together with the boats, or a part of them, taken on down the Delaware. It further appears, as her first officer (Rand) testifies, that her captain pointed out to him on the chart before leaving Philadelphia the location off Barnegat as their next objective point after passing the Breakwater. When she got there she took on the cargo, under circumstances which seem to leave no room for doubt that she expected it. Now, gentlemen, you must judge from these circumstances, from all the testimony relating to the subject, whether it is not reasonably clear that the "Laurada" and her supplies, including extra boats, were not provided here, in this district, expressly to carry the expedition subsequently taken on off Barnegat. If they were, you must next determine whether it is proved that the defendant Hart made this provision. The vessel was in the service, at the time, as it would

seem, of the John D. Hart Company, of which he is president and manager. Who else, or whether anybody else, is in the company does not appear, so far as I remember. If there is testimony showing that anybody else is in that company you will remember it. There may be. I remember no such testimony. It is clear, however, according to the testimony, that he was the president of that company, occupied the office, and managed its business. The evidence, if believed, and it is uncontradicted, shows that the defendant gave several orders respecting the vessel about this time, when she came in before this trip, and when she was going out. Among these orders, was one, if not both, respecting her clearance; that he directed supplies to be put on board; that he took part in employing her crew, and that while the order to overtake her down the Delaware with extra boats, was not signed by him, nor anybody else, the tug boatman, Smith, usually employed by the John D. Hart Company, who had taken the "Laurada" out and turned her down the river that day, to whom this order for extra boats was delivered unsigned, executed it, and presented his bill for this service to Mr. Hart, I believe the next day, or soon after, and that Mr. Hart tore it up, did not hand it back, saying he knew nothing about the matter. It was, however, paid a day or two later, by the hands of some one whom the witness says was unknown to him. That Mr. Hart knew that the "Laurada" was going to the point off Barnegat to take the men on board would seem to be clear, if the witnesses are believed, and whether they are to be believed or not is for you, because they testify that he procured the "Fox" and sent the men on her to the point where they met the "Laurada." If this latter statement is true, the inference seems irresistible that he knew the "Laurada" was going there for these men. From these circumstances and from all other evidence, and with a recollection of what counsel have said, you must determine whether the defendant, here in Philadelphia, provided this vessel and her supplies for the purpose of carrying the expedition to Navassa, on its way to Cuba. If you do not find he did, you will acquit him. If, on the contrary, you find he did, you will next pass to the only remaining question in the case. Did he know at the time that the expedition was a military expedition, as charged, when he provided the means for its transportation? To satisfy you he did, the Government points to what it calls the suspicious circumstances attending the fitting out of the vessel, her clearances, and voyage from this port to the point off Barnegat. What weight these circumstances should have in deciding the question of knowledge on his part is entirely for you. The Government argues that the object was to deceive the officers of the United States which, it says, the defendant could have no object in doing if he did not believe he was violating its laws. On the other side, it is urged for

the defendant that it is just as reasonable to believe that the object of these circumstances called suspicious, was simply to deceive the Spanish authorities and Spanish agents hereabouts. You must say whether this position of the defendant is a reasonable one or is not. The Government further points, in this respect, with a view of showing knowledge in the defendant of the character of this expedition, to the fact that the defendant had intimate relations, if the testimony is believed, with the men comprising the expedition; that he forwarded most of them from Atlantic City to the point of embarkation; that he knew who were going, those with military titles as well as those without; that he knew arms and other war material were to be taken on with the men, and must have understood the character of the expedition. If he sent the vessel, the "Laurada," to the point off Barnegat, the inference would seem to be entirely reasonable that he understood at that time that she was to take these men, because if the testimony is believed he sent the men there, the principal part of them, and that he knew that she was to take the military stores, because the vessel took them as if she had previous orders. The vessel was not surprised in finding, so far as appears, that military stores were to be taken; they were taken as matter of course, just as the men were. You have heard and must consider the answer the defendant's counsel have presented to this contention of the Government's, that the defendant, Hart, had knowledge when the "Laurada" went out from here of the character of this expedition; and from all the evidence bearing on the question, you must determine whether it is proved that the defendant here furnished the means of transportation for the expedition, with knowledge at the time that the expedition was military, as before described. If he did not, he is not guilty. If he did, he is guilty.

In conclusion, I repeat, if the expedition was a military one, as charged, and the defendant here in Philadelphia provided the means for its transportation, with knowledge that it was a military expedition, he is guilty; otherwise, he is not.

He is entitled to the benefit of any reasonable doubt that may exist, on a careful and impartial examination of the evidence. If your minds are not fully convinced of his guilt he must be acquitted. On the other hand, if your minds are so convinced, he must be convicted. No suggestions of prejudice against, or sympathy for him, can be allowed to influence your verdict. Your duty and the public interests, as well as the defendant's rights, require that the case shall be decided exclusively on the testimony you have heard here.

I repeat, this case has been tried with a great deal of care, most ably, as I think, by the counsel on both sides, with such a degree of good temper as is best calculated to reach a just result; and it

is with you to determine how it shall be decided. I suppose a citizen is never called to the discharge of a higher duty than that of assisting in the administration of justice as jurors. To listen to anything else than the evidence heard from the witness stand, the arguments of counsel and the charge of the court, you would fail in discharging this important duty, and show yourselves unworthy of the confidence reposed in you. I want you to be thoroughly impressed with the importance of the case and to the importance of deciding it according to your best judgments as applied to the evidence. All parties must be satisfied with such a result.

My attention is called to the fact that I used the term "preponderance" in speaking of the evidence, in one instance. If I did, it was a lapse of the tongue. I did not mean to use that word in speaking of the measure of evidence necessary to convict. Of course, as I said to you over and over again, in answer to the defendant's points, as well as otherwise, to convict the defendant the evidence must be entirely clear; it must be so clear as to leave no room for reasonable doubt. In other words, it must convince your minds entirely and fully. I am sure you understood me fully, and I call you back only to avoid the possible danger of some dispute hereafter.

INDICTMENT UNDER SECTION 5440 FOR CONSPIRACY TO VIOLATE SECTION 5286.

UNITED STATES vs. CARLOS ROLOFF, J. T. SMITH AND J. J. LUIS.

CHARGE OF JUDGE MORRIS (1897).

MORRIS, J.: The propositions of law submitted on behalf of the defendant, by his counsel, all of them express propositions which are abstractly correct.

Some of them are open to the objection that it is difficult to find the evidence upon which to base them, but as the whole case must be submitted to the jury, and all the evidence for their consideration, I shall trust to their understanding of the testimony and shall grant these prayers as they stand, rather than undertake to point out the particular portions of them which I think are doubtful, because of the lack of evidence to support them. They are abstractly correct, and I shall leave it to the good sense of the jury to apply them to the testimony in connection with the instructions which I shall give them.

And, gentlemen of the jury, I grant these instructions which are asked on behalf of the defendant, in connection with the instructions which I now shall give you. First, with regard to the crime of conspiracy; that is the basis of the charge in this case, and the first element in this indictment upon which this defendant is on trial to be found by you is the existence of the conspiracy charged.

The crime of conspiracy is the agreement of two or more persons to do an unlawful act; and when the agreement to do the unlawful act is proved, and the doing of some act charged as having been done to carry the unlawful agreement into effect is proved, then the crime of conspiracy is established.

The assent of the minds of those charged with conspiracy may be proved by direct testimony, or it may be inferred from any facts which establish to the satisfaction of the jury that two or more of the parties charged entered into the agreement to do the unlawful act. It is not necessary that there should be proved a formal agreement, but an agreement may be inferred by the jury from facts proved which show that the parties charged, or some two of them, were acting together with a common intent to effect the same unlawful purpose. If such a conspiracy is proved, then such person in it is liable for whatever is done by any of the others in carrying out the unlawful purpose.

In the case you are trying, the unlawful act which it is alleged the conspiracy was formed to commit is declared to be unlawful by Sec. 5286 of the U. S. Revised Statutes, which prohibits any person in the United States from providing or preparing the means by

which any military expedition or enterprise is to be carried on from the United States against any foreign power with whom the United States are at peace.

The first and second counts of the indictment charge that the defendants named, of whom the defendant on trial is one, conspired to provide the means for such a forbidden military expedition, and to effect that object provided the steamer "James Woodall" in the port of Baltimore for the purpose of transporting such a military expedition or enterprise from the United States to Cuba.

The third and fourth counts charge that the same defendants conspired to commit the same unlawful act, and to effect it purchased provisions to be used on the steamer "James Woodall" for the purpose of transporting a military expedition consisting of a body of armed men from the United States to Cuba, which as the defendants know had been previously organized within the United States for the purpose of making war against the island of Cuba.

It is not necessary that you should find that all the parties charged were in the alleged conspiracy; it is sufficient if you find that Luis, the one on trial, together with any other one of the persons charged, was in the agreement. There must be two at least in a conspiracy, and in this case Luis and any one of the other defendants would be sufficient. In this case it would be sufficient if you found that Roloff and Luis agreed together to provide and fit out the steamer to carry a military expedition against Cuba as charged, and that they did the act charged to effect the unlawful purpose they had agreed to attempt.

As to the fact of an agreement between Luis and Roloff to fit out the "Woodall" for some secret enterprise very different from any of the ordinary uses of such a steamer, if you believe the testimony of Captain Hudson, you have very direct testimony, as he testifies that at the hotel in this city where he says they were known by assumed names, the whole plan was discussed by them in the evening of each day when he reported what he had done under his orders from them, and received orders what next to do in fitting out the steamer, and the money to do it with, and where, as he testifies, in the presence of each other, they unfolded the whole plan of taking a body of men from Florida and landing them in Cuba to take part in the insurrection there.

Captain Hudson himself had knowledge, as he admits, of the character of the enterprise. He was, therefore, a co-conspirator, and his evidence is to be received with caution, and should not be received by you as conclusive unless supported by such corroborative facts and circumstances as lead you to believe that it is true. He is a competent witness, but it is proper that you should weigh his testimony and scrutinize it with care; but if you find that it is corroborated where, if it were true, you would naturally expect to find corroboration, and that it is supported by other testimony, and

is itself consistent and probable, and is so confirmed in material matters that you are satisfied that he has testified truly, then you are bound to credit his testimony, no matter what you may think of his motives in giving it; or you may accept so much of his testimony as you believe to be true and corroborated, and may reject the rest. And so with regard to other witnesses who have been called by the United States, their character, their bias, and their motives in testifying should be considered by you in determining the credit you will give to their sworn statements; but if on the whole you are fully satisfied that they have told the truth you should not reject their testimony solely because you do not approve their conduct.

If you are satisfied that Luis and any other one or more of the defendants did agree together to provide the means to carry a body of men from the coast of Florida to Cuba, then you must consider whether they agreed together to provide the means for what was a military expedition against the Spanish Government in Cuba.

To constitute a military expedition within the meaning of this law, it is not necessary that the men comprising it should wear uniform or have the organization usual in a regular way.

If you find that the enterprise in this case was of a military character; that is to say, it was not for any peaceful purpose, but was for a military service with hostile intention against the Spanish rule in Cuba; and if the men had a concert of action among themselves by which they combined into a body which submitted to such command and authority as was necessary to enable them to embark in Florida as a body and to land as a body in Cuba, and that they had with them the arms and ammunition of a military body; that they came as a body from an out-of-the-way place on the coast of Florida bringing nothing but their arms and ammunition; that the arms and ammunition were not undivided property, but appeared to belong to a common stock; that they were fitted out with shoes from a common supply sent out for their use from Baltimore; that they were controlled and directed in their embarking and disembarking by men to whom they gave military titles, and that they said that they were going to Cuba to fight the Spaniards—these are facts which if found by you are sufficient to warrant you in finding the expedition was in fact a military expedition from the United States against Cuba.

The law does not make it an offense to transport individuals who go without any combination together to a foreign country, there to enlist in any military service; nor is it an offense to transport arms as merchandise to any foreign country where there is a war or insurrection, but it is an offense to provide the means for transporting a body of men who have combined and organized together in the United States to go with arms in their hands to Cuba, there to make war against the recognized government; and this is so, although it

may not be intended that the expedition on reaching Cuba shall act as an independent military body, but is intended to join some part of the insurgent army there.

The testimony in this case is not at all complicated, and you have listened to it attentively, and I shall not comment upon it. I will only say to you that this statute of the United States is one which it is your duty honestly to enforce, just as you would enforce any other law which you may be sworn to try a case under.

That nations at peace with the United States shall not permit military expeditions to be set on foot from their shores against our country is a rule of neutrality which the United States has strenuously insisted upon, and it is a matter of national honor that we ourselves shall honestly enforce our own laws, forbidding the same offense from our shores against other nations.

In examining the jurors in this case, I did not hold those to be disqualified who admitted that they sympathized with the Cuban insurrection, but who said that they could decide this case clearly upon the testimony, and I feel confident that you will do so. The only way that any criminal law can be enforced, or any offense punished under our Government, is by the verdict of a jury; and it is upon the honest desire of every juryman to fulfill the obligation of his oath that the enforcement of the law depends. The duty of a juror, therefore, is a very high and important function of citizenship of this free country. You will, therefore, take the law as given you by the court, and fairly consider the evidence, remembering that the defendant now on trial in this, as in every criminal case, is presumed to be innocent, and that presumption protects him from conviction until you are satisfied beyond a reasonable doubt from the evidence that he has committed the offense charged against him.

I grant the propositions submitted by the defendant, with one or two slight corrections which I suggested.

Mr. OWENS: We make no exception; if your honor marks them, of course we are perfectly satisfied with the correction.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX II.

PART I.

UNITED STATES VS. "THREE FRIENDS."

PART II.

UNITED STATES VS. "THE LAURADA."

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX II.

PART I.

UNITED STATES VS. "THREE FRIENDS."

INDEX, SEE NEXT PAGE.

INDEX

TO PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES ON CERTIORARI IN THE CASE OF THE "THREE FRIENDS."

[Filed Jan. 30, 1897.—James H. McKenney, Clerk.]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,
vs.
THE STEAMSHIP "THREE FRIENDS," HER BOATS, TACKLE, ETC. } No. 701.

PETITION FOR WRIT OF CERTIORARI.

This is a proceeding in admiralty for a forfeiture brought in the Southern District of Florida under Revised Statutes, Section 5283. Exceptions to the libel were sustained by Judge Locke. An appeal has been perfected from his decision, and the cause is now pending in the Circuit Court of Appeals for the Fifth Circuit.

The question involved in this cause is whether the words "colony, district, or people" in the section aforesaid are confined in application to political bodies whose belligerency has been formally recognized; the "Three Friends" having been fitted out and armed in aid of the present insurrection in the Island of Cuba, which insurrection is sufficiently notorious and extensive to have received the attention of the Government of this country for nearly two years past, although the insurgents have not received any recognition of belligerency—of all which the courts take judicial notice.

This section has been applied to expeditions in aid of insurrections of much less magnitude and importance in the cases of the "Mary N. Hogan," 18 Fed. Rep. 529, and the "City of Mexico," 28 Fed. Rep. 148. Subsequently the question was raised in various of the lower courts whether the section was applicable when belligerency had not been recognized. It has been much discussed and regarded as very doubtful. It seems never to have been both discussed and decided until the present decision of Judge Locke. The question was presented to this court upon application for a writ of *certiorari* in the case of the United States *vs.* The Steamship "Itata," at October Term, 1892. That vessel when seized was engaged in an expedition on behalf of the so-called legislative party

in Chile during the war of 1891, said party having received no recognition of belligerency from this Government. The petition was "denied without prejudice" on October 31, 1892 (149 U. S. 789). The case was decided upon other grounds by the circuit court of appeals on May 8, 1893 (15 U. S. App. 1). The war then being long since over, and the so-called legislative party being the recognized government of Chile, no further attempt was made to obtain a writ of *certiorari*, and for this reason the question has never been decided by the Supreme Court.

The opinion of Judge Locke is partly based upon misinformation as to the history of the phrase "colony, district, or people," which he understands to have been inserted in the statute in order to avoid the effect of the decision in Gelston *vs.* Hoyt, 3 Wheat. 246, decided at February Term, 1818, after the belligerency of the main South American colonies was formally recognized by the message of President Monroe on December 5, 1817. The words in question, however, were first inserted in this branch of our legislation by the Act of March 3, 1817, Ch. 58, as pointed out in "The Meteor," 17 Fed. Cas., at p. 200. At that time the belligerency of the Spanish American colonies had not been formally recognized; and whether their belligerency had been formally recognized thereafter remained a disputed question, Monroe's opinion being in the affirmative, Clay's in the negative, while Wirt regarded the question as one in doubt. Arguments drawn from the history of the times tend strongly to the conclusion that recognition of belligerency, technically so called, is entirely immaterial to the legislation now under consideration, and this conclusion, as is believed, is confirmed by careful analysis of the statute itself.

The question is a very important one, since if the section under consideration is not applicable to such expedition in support of the present Cuban insurrection these expeditions are piratical in character and prosecutions should be instituted under other provisions of the Revised Statutes.

The question, moreover, is of especial importance, because it arises likewise under Section 5282 of the Revised Statutes elsewhere.

Unlawful expeditions in aid of the Cuban insurrectionists, endangering the honor and dignity of the United States, are continually in preparation, and it is of great importance that the construction of the statutes intended to preserve the neutral and pacific relations of the United States should be settled as early as possible.

For these reasons the Secretary of State has requested that an application be made at once for a writ of *certiorari* to review the decision of the circuit court.

The Attorney General, concurring in this opinion, and believing the present to be one of the exceptional cases which warrant the issuance of such a writ without awaiting the decision of the lower appellate court, respectfully presents this application. The certified transcript

of record is presented herewith. Notice of the application has been duly given to counsel for the respondent, and proof thereof filed; and notice has also been given that if this application be granted the Attorney General will forthwith without further notice move that the cause be advanced and set for argument upon the earliest possible day.

JUDSON HARMON,
Attorney General.

ORAL PRESENTATION BY ATTORNEY GENERAL OF PETITION FOR CERTIORARI.

FRIDAY, January 29, 1897.

The ATTORNEY GENERAL. I have a petition for *certiorari* in the case of the United States *vs.* The Steamship "Three Friends," now pending on appeal in the Circuit Court of Appeals for the Fifth District.

I make this application at the request of the Secretary of State for grave public reasons, which make it of the highest importance that the law should be settled by a decision in this court relative to the sending of armed vessels from this country.

The action was a libel by the United States against the "Three Friends" under Section 5283 of the Revised Statutes, which she was alleged to have violated by being fitted for warlike purposes and having committed hostile acts in the service of a certain people and against the Kingdom of Spain with which we were at peace. The district court dismissed the libel on exceptions.

Mr. JUSTICE GRAY. Has there been any decision in the circuit court of appeals, interlocutory or otherwise?

The ATTORNEY GENERAL. Not yet. It is only for grave reasons that I now apply to the court, under the necessity for a speedy decision of the questions to have the record brought up. We have lost no time in getting the case into the circuit court of appeals so as to make this application. The sole ground of the decision below was that the present insurgents in Cuba, sometimes called the Republic of Cuba, and sometimes designated by other names, do not come within any of the words used by the statute, which are "prince, state, colony, district or people;" that whatever they are they are none of these; that these terms were used in the statute to indicate only political organizations or communities whose independence has been formally recognized by the United States, and as the United States have not recognized the insurgents in Cuba they are therefore not a district, state, colony or people. The result is that these people who take out vessels and expeditions armed for warfare on the seas in aid of these insurgents are pirates from lack of any political motive to justify the offense which they commit or

are ready to commit, or there may be no statute at all under which they are punishable.

Mr. JUSTICE HARLAN. Is the other side represented?

The ATTORNEY GENERAL. Mr. Phillips appears.

Mr. JUSTICE GRAY. I make the suggestion to you—it occurs to my mind—I presume you have thought of it—and it is this: Whether this is really an application for *certiorari* in fact to the circuit court of appeals.

Mr. PHILLIPS. District court.

Mr. JUSTICE GRAY. Yes, the district court in the act has the same standing, but the doubt which was suggested to my mind is when the statute says you may issue a writ of *certiorari* to the circuit court of appeals and bring the case up here the same as by writ of error or appeal that is a writ of error or appeal from the circuit court of appeals. We have in one or two cases issued a writ of *certiorari* where there was not a final disposition of the case, nor an interlocutory order, but the difficulty here is, and I dare say you may be able to meet it, that there has been no action of the circuit court.

The ATTORNEY GENERAL. No; but when the case is once appealed to the circuit court of appeals we think the case must be considered as in that court for all purposes, and it would follow that if the case was one in which an interlocutory order had been made——

Mr. JUSTICE BROWN. Why do not you go on and get an opinion of the court of appeals?

The ATTORNEY GENERAL. Simply because it would not be authoritative all over the country, and this is a matter involving the different departments of the Government daily and hourly, and it is of the highest importance that this statute be settled authoritatively, and as your honors recall in the Wiborg Case there were conflicting decisions——

Mr. JUSTICE GRAY. How is the decision of the district court?

The ATTORNEY GENERAL. On exceptions.

Mr. JUSTICE GRAY. Can these exceptions be taken and disposed of immediately in the circuit court of appeals?

The ATTORNEY GENERAL. I am not advised as to the state of the docket in that court, but whatever the delay is, I state with all the earnestness that a knowledge of the facts gives that it might be serious and that if there ever was a case in which this court should exercise the power, if it exist, of disposing of a question of public importance, this is one. Of course we can get the Circuit Court of Appeals to facilitate the hearing if necessary.

Mr. JUSTICE HARLAN. When does that court meet?

The ATTORNEY GENERAL. I do not know, your honor.

Mr. PHILLIPS. In February, I think.

Mr. JUSTICE HARLAN. Is this application opposed?

Mr. PHILLIPS. Yes, sir. I see there is a brief here. There has been no service of brief of the other side under the application.

The way it comes about is this. After the ruling of the district court sustaining exceptions to the libel the Government asked for an appeal to the court of appeals, and immediately thereafter gave notice before the case had been sent to the court of appeals that they would move here for a writ of *certiorari* to bring up the case from the court of appeals. I have not seen the record. I do not know whether this record is the record of the court of appeals. It has not been served on me. This appears to be a record from the district court. There has not been a record sent here from the court of appeals so this case, in which application is made to this court for a writ of *certiorari* really to the district court, and the case is taken to the court of appeals simply as matter of form in order to apply here for a *certiorari*, in a case, which by the act of 1891, is made final in the court of appeals. Now, if your honors desire any argument I think it can be furnished—that the only authority of this court to allow *certiorari* is in the exercise of its political power over the court of appeals. It was never the intention of Congress that an application here for *certiorari* should be used as a mere device to get a case here from the court of appeals, which can be taken directly under the act, by direct appeal from the district court. This record which is here presented to the court is simply a record in the district court. There has not been any action of the circuit court of appeals, and the Government comes here on this notice and asks the court to send a writ of *certiorari* to the circuit court of appeals and no action whatever in such circuit court of appeals. If your honors think the matter worthy of your further consideration I ask leave, inasmuch as I have not been furnished with the brief of the Government, to have an opportunity to submit a brief.

Mr. JUSTICE HARLAN. Renew your motion Monday morning. In the meantime print any suggestions you want to make on the question of jurisdiction. (Then to the Attorney General.) What do you say as to notice?

The ATTORNEY GENERAL. We served notice.

Mr. PHILLIPS. I will not raise any question about that.

Mr. JUSTICE HARLAN. Both to be printed by Monday. We take a recess on Monday.

The ATTORNEY GENERAL. It is only fair to say that if the court grants the writ of *certiorari* I shall make a motion to have as early a hearing as possible.

Mr. JUSTICE HARLAN. The court will not meet again till the first Monday in March.

The ATTORNEY GENERAL. I know that, and if the court takes the view of the case that I do, I shall ask that it assign some day for argument during the recess.

Mr. JUSTICE HARLAN. That can be considered on Monday.

Mr. PHILLIPS. This case involves the precise point raised in the

case of the "Itata," where there was a decision dismissing the libel and holding that the Government had not the right to proceed against the vessel. The Government came here in that case and applied for a writ of *certiorari* when there had been no decision by the court of appeals, and this court denied the application of the United States without prejudice. It was for this reason, and the chief justice, if he were present, would be able to remind your honors of it, because no action had been taken in the court of appeals.

Mr. JUSTICE HARLAN. Put the reference to that on your brief and any other suggestions. The other side can renew the motion Monday morning.

[Filed Jan. 30, 1897—James H. McKenney, Clerk.]

In the Supreme Court of the United States, October Term, 1896.

THE UNITED STATES, Appellant,
vs.
THE STEAMSHIP "THREE FRIENDS," HER BOATS, TACKLE, ETC. } No. 701.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

It has been necessary to prepare the present petition in great haste on account of the long recess of this court which is impending, and on account of the very great importance of obtaining an early and at the same time a final settlement of the question raised by this decision of Judge Locke. It is not intended fully to argue the merits of this question now. There is not time enough to prepare an argument upon it which would both fully and adequately present the case of the Government; nor would it be fair to the counsel for the appellee to demand a complete argument from him at this time. Judge Locke's opinion shows that the point is new; that it was never raised in any case under the "neutrality" chapter until 1899 in "The Carondelet," 37 Fed. Rep. 799; that prior thereto Section 5283 had been assumed by everybody to apply to cases like this; and that while the point was considerably discussed from 1889 to 1893, it was never before decided.

It is believed that the petition sufficiently states the reasons for issuing this writ, provided that the court has jurisdiction in the premises. The present brief is confined to the jurisdictional question suggested by the court.

1. This case is one in which the court has jurisdiction to issue a writ of *certiorari*. Being an appeal in an admiralty case, the decision of the circuit court of appeals, is final within the Act of March 3, 1891, Ch. 517, Section 6, but that act provides: "That in any such

case as is hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, by *certiorari* or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

2. This court has power to issue a writ of *certiorari* before final judgment in the circuit court of appeals. While it will not ordinarily do so, the application is addressed to its discretion.

This is discussed and decided in American Construction Co. *vs.* Jacksonville, &c., Ry. Co., 148 U. S. 372. Mr. Justice Gray said (p. ,385):

"Doubtless this power would seldom be exercised before final judgment in the circuit court of appeals, and very rarely, indeed, before the case was ready for decision upon the merits in that court. But the question at what stage of the proceeding and under what circumstances the case should be required by *certiorari* or otherwise to be sent up for review, is left to the discretion of this court, as the exigencies of each case may require."

3. It is not necessary that any step should be taken by the circuit court of appeals before the issuance of the writ of certiorari.

The decision that no final judgment need be entered in the circuit court of appeals before the issuance of the writ involves the decision that the writ can be applied for as soon as the record reaches that court. There is no language in the statute upon which an intermediate limitation can be based. This court has "the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." In other words, it really reviews, not the decision of the circuit court of appeals, but the decision of the court of first instance. Its mandate is directed to the latter court (Sec. 10). This is exemplified by certain cases which have already arisen under the Act of 1891. In Chicago & Northwestern Ry. Co. *vs* Osborne, 146 U. S. 354, the writ was denied by this court, because (as is shown by the authorities cited by the Chief Justice) there was as yet no final judgment in the court of appeals. The court's judgment did not end the actions, but "remanded the cases for further proceedings in accordance with its opinion." Recently, however, in the case of Forsyth *vs.* City of Hammond, No. 615 of this term, a writ of *certiorari* was issued under similar circumstances, although counsel opposing the application relied upon the Osborne Case.

4. The circuit court of appeals has jurisdiction of the case, and the application, although hurried, is not premature. The petition states that "the cause is now pending in the Circuit Court of Appeals for the Fifth Circuit." The transcript of record presented to this court is a duplicate of the transcript of record filed in that court. If a writ of *certiorari* be directed to that court, the return will be a

precise copy of what is now before this court, with the addition of the file mark and certificate of the clerk at New Orleans. The transcript is certified by the clerk of the district court; and the additional certificate of the clerk of the circuit court of appeals can add nothing of value at the present stage.

It is, of course, preferable under ordinary circumstances, that legal proceedings should be conducted with the fullest regard for formalities. But the circumstances under which this application is made are extraordinary, the grave reasons of state policy which induce it making it highly important that the law should be settled by this court with the least possible delay.

The present case is one justifying immediate action under the rules laid down by this court.

In the American Construction Co. Case above cited, the writ of *certiorari* was refused because the alleged error of the court below was "neither so important in its immediate effect nor so far-reaching in its consequences as to warrant this court in undertaking to control the cause at this stage of the proceedings." 148 U. S., at pp. 385–6.

It is submitted that no case could be more "important in its immediate effect" than the present one. A comparison of the provisions of Section 5283 with those of Section 5282 would seem alone to be sufficient to establish this proposition. The nation cannot honorably allow its individual citizens to enlist in a foreign war unless the circumstances justify the nation itself in declaring war. The national dignity requires that enlistments, as well as hostile cruises, expeditions and enterprises in aid of insurrectionists, should be prevented. The disturbances in the island of Cuba are now at their height.

A decision of this court upon a writ of *certiorari* issued after the case shall have been heard and finally decided in the circuit court of appeals, would be very probably too late to have any effect except as an authority in case of future foreign insurrections. This is well exemplified by the case of the "Itata," referred to in the petition. There (not for lack of power, but in the exercise of its discretion, as is understood) this court in October, 1892, declined to issue its writ. There was no urgency, as the hostilities were already over. The circuit court of appeals did not decide the cause until so late that it could not have reached this court for argument until October, 1893. The hostilities then were so long over, and the revolutionary party had so long been the recognized government of the country, that the case was dropped.

Respectfully submitted.

JUDSON HARMON,
Attorney General.
EDWARD B. WHITNEY,
Assistant Attorney General.

[Filed Jan. 30, 1897—James H. McKenney, Clerk.]

In the Supreme Court of the United States.

THE UNITED STATES
vs.
THE STEAMSHIP "THREE FRIENDS."

BRIEF IN OPPOSITION TO THE MOTION OF THE UNITED STATES FOR A CERTIORARI.

The appellant moves for a *certiorari* to the Circuit Court of Appeals for the Fifth Circuit to bring up an admiralty cause, which it is alleged is there pending, but not yet decided.

A libel for condemation of the vessel, a steam tug valued at $4,000, was filed by the United States in the Southern District of Florida, alleging that the vessel was subject to forfeiture because, on the 23d of May, 1896, furnished, fitted out, and armed with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace.

It was also alleged, after exceptions filed, that the vessel was fitted out, furnished, and armed within the jurisdiction with intent that she should be employed "in the service of a certain people, to wit, the insurgents in the island of Cuba, otherwise called the Cuban revolutionists, to cruise," etc.

A subsequent paragraph varies the allegation slightly.

Exceptions were filed to the libel on the ground, among others, that Section 5283, Revised Statutes, did not apply, because the libel failed to show, within the intent of the statute, that the vessel was fitted out and armed or furnished with intent that said vessel should be employed in the service of a foreign prince or State or of a colony, district, or people with whom the United States are at peace.

January 18, 1897, the cause coming on to be heard upon exceptions, it was ordered that the exceptions referred to should be sustained.

An appeal was allowed to the United States for the purpose of removing the case to the Circuit Court of Appeals for the Fifth Circuit.

Almost immediately thereafter, and before the case could possibly reach the court of appeals, the Government gave notice that application would be made here for a writ of *certiorari*, to bring up the case from the circuit court of appeals. A record is transmitted with the motion now made, but it is simply a transcript of the record in

the district court. There is nothing in it to show that a record has even been filed in the circuit court of appeals or the appeal otherwise prosecuted and perfected in that court.

The Government moves for a *certiorari* to the circuit court of appeals to bring up an admiralty cause there pending and not yet heard.

We submit that a *certiorari* cannot properly be allowed in such a case before some action is taken in the circuit court of appeals, either by a decree, judgment, or certification of questions.

A similar motion was made by the Government in a similar case—that of the "Itata"—at October Term, 1892. It was denied with prejudice to a renewal.

Although no reasons were assigned, it is understood the court refused the application because no decree had been made or other action had been taken in the court of appeals. The "Itata," 149 U. S. 789.

The same question on the merits now presented was involved in that case, to wit, the right to proceed against the vessel under Section 5283 of the Revised Statutes, whether the word "people" there used applies to the acts of individuals not connected with the operations of a foreign power or belligerent.

An elaborate brief was filed by the Attorney General, in which this court was invoked to grant a *certiorari* to the circuit court of appeals on the ground of the importance of the cause.

After the refusal of the motion the Circuit Court of Appeals for the Seventh Circuit affirmed the decree of the district court. This decision seems to have satisfied the Government, for no further application was made to this court. The "Itata," 56 Fed. Rep. 505.

President Harrison, in his message to Congress, December 9, 1891, was of opinion that the proper course for the Government to pursue was to obtain from Congress an amendment of the law so as to cover the case which the courts had decided did not fall within the wording of the act. He said: "A trial in the district court of the United States for the Southern District of California (the "Itata," 49 Fed. Rep. 646) has recently resulted in a decision holding, among other things, that, inasmuch as the congressional party had not been recognized as a belligerent, the acts done in its interest could not be a violation of our neutrality laws. From this judgment the United States has appealed, not that the condemnation of the vessel is a matter of importance, but that we may know what the present state of our law is, for, if this construction of the statute is correct, there is obvious necessity for revision and amendment."

No action, however, was taken by Congress amending the legislation on the subject.

The Government now in a similar case undertakes again to pursue the matter in the courts.

It has again been held by a United States court, in accordance

with the "Itata" decision, that the statute did not apply to the action of individuals, where there was no war nor belligerency, and consequently no neutrality on the part of the United States between contesting powers or political entities. It held that the word "people," in the connection in which it is used, referred to a power or belligerent, and not to mere unorganized individuals engaged in civil commotion.

The question of the merits, however, is not one which can now come before the court. The circuit court of appeals must first act in the matter.

By the Act of March 3, 1891, Chapter 517, Section 8 (26 Stat. 826), it is provided that in any case made final in the circuit court of appeals it shall be competent for the Supreme Court to require such case to be certified to the Supreme Court for its review and determination, with the same power and authority as if it had been carried by appeal or writ of error to the Supreme Court. It is the judgment or decree of the court of appeals which is "made final." It is a "review" of the proceeding of the court of appeals which is provided. Such "review" is to be the same as if on writ of error or appeal; consequently some action by the court which can be the subject of review must be first obtained. By this clause it was only intended that this court should grant a *certiorari* after decision or after the circuit court of appeals had, in pursuance of the previous clause, certified to this court any question concerning which such court desired instruction for proper decision, or in pursuance of the power, after such questions had been certified, to order the whole record and case to be sent up for consideration.

In no instance has this court awarded a *certiorari* in any case in which the decision of the circuit court of appeals is made final under the last clause of Section 8, except where some action had been taken in the case by the circuit court of appeals.

This result follows from the manifest object of the power, which is to enable this court to exercise an appellate jurisdiction over the circuit court of appeals.

This construction is made certain by the special power vested in this court, before decision to order the whole record and case to be sent up for consideration when questions are certified here by the circuit court of appeals.

Such questions are a substitute for the certificate of division of opinion provided for in former acts, the decision of which was, undoubtedly, the exercise of appellate jurisdiction over the action of the court granting the certificate.

In Lau Ow Bew, petitioner, this court said: "It is evident that it is solely questions of gravity and importance that the circuit court of appeals should certify to us for instruction, and that it is only when such questions are involved that the power of this court to require a case in which the judgment and decree of the court of

appeals is made final, to be certified, can be properly invoked. The inquiry upon this application, therefore, is whether the matter is of sufficient importance in itself and sufficiently open to controversy to make it the duty of this court to issue the writ applied for in order that the case may be reviewed and determined as if brought here on appeal or writ of error." (141 U. S. 587.)

The interposition of this court was there sought after judgment.

It could not have been the intention of Congress to provide for an appeal from the district and circuit courts in cases such as the present arising under the admiralty law to the court of appeals, making the appellate jurisdiction of such latter court final in these cases, and to permit the Supreme Court to entertain jurisdiction over them, unless for the purpose of reviewing the proceedings in the circuit court of appeals.

No reason appears why an admiralty case should be taken from the district court to the court of appeals, and before the court of appeals can act on it, require it to be transferred here by *certiorari*.

The appeal to the court of appeals cannot be made mere matter of form for the purpose of getting a case transferred here, which could not come directly from the court rendering the judgment or decree.

If this were permissible this court would review the proceedings in the district court alone, for the circuit court of appeals has not acted.

In American Construction Co. *vs.* Jacksonville Ry., 148 U. S. 355, the court remarked that the power to grant the writ of *certiorari* should be exercised sparingly, and only in cases of peculiar gravity or in order to secure uniformity of decision. In all the cases referred to in which the writ had been granted the circuit court of appeals had taken action. In the Construction Company Case the court of appeals had made a decree on appeal from an interluctory order, as was allowable under the Act of 1891. An application having been made for a *certiorari* to review such decree, this court held that in such an "exceptional case" the power of this court to require by *certiorari* the case to be sent up for review could not be doubted. "There is nothing in the act to preclude this court from ordering the whole case to be sent up, when no distinct questions of law have been certified to by the circuit court of appeals, at as early a stage as when such questions have been so certified. The only restriction upon the exercise of the power of this court, independently of any action of the circuit court of appeals, in this regard, is to cases 'made final in the circuit court of appeals'—that is to say, to cases in which the statute makes the judgment of that court final, not to cases in which that court has rendered a final judgment. Doubtless, this power would seldom be exercised before final judgment in the circuit court of appeals, and very rarely indeed before the case was ready for decision upon the merits in that

court; but the question, at what stage of the proceedings and under what circumstances the case should be required, by *certiorari* or otherwise, to be sent up for review, is left to the discretion of this court, as the exigencies of each case may require." (148 U. S. 385.)

Here it is only decided that, in order for this court to exercise its appellate jurisdiction over the proceedings in the court of appeals, it is not necessary that a final judgment or decree should have there been rendered prior to an application here for a *certiorari*.

As the circuit court of appeals had jurisdiction on appeal in the particular instance of an interlocutory decree and as it was one of the cases made final there, it was entirely clear that this court had as much right to exercise its supervisory jurisdiction over such case as in any others made final in the circuit court of appeals.

But the decision is far from intimating that the court here can grant a *certiorari* under the act to bring a case from the court of appeals, made final there, when no judgment or decree has been rendered by such court, and no action by questions certified or otherwise has there been taken.

If the court possesses the jurisdiction now invoked by the Government, the case is not one for its proper exercise.

It would be very strange should this court order a case not acted on in the court of appeals to be sent here by that court when no reason exists why the court of appeals should not be allowed to exercise its proper jurisdiction and when such court has not intimated any difficulty in its decision of the matter.

The final jurisdiction over the cause is vested in that court under the Act of 1891.

There has been no difference of opinion in the courts as to the meaning of the language of Section 5283, construed by the district court.

If the circuit court of appeals is not deprived of the right to decide the case, it may reach a conclusion satisfactory to the Government. Why then, should this court, in advance of such a decision, order the case to be sent here for a hearing?

The object of the Act of 1891 was to take away from this court the disposition of certain classes of cases, including those in admiralty, in order to lighten the labors of the court, while leaving a limited and defined supervisory jurisdiction over the subordinate Federal tribunals.

It was intended to constitute the Federal courts of appeals tribunals of the highest dignity and consequence, whose decisions in the matters confided to them should be final, except as otherwise provided.

The alleged importance of a cause is certainly not sufficient in itself why such a court should not be entrusted with its determination.

The gravity of the question presented in the district court is much overrated by the Government.

When it is considered that the present is the only prosecution under Section 5283 instituted by the Government since the beginning of the disturbances in Cuba two years ago, it is seen the case is of no far-reaching consequences.

The court will take judicial notice that there has been throughout that period a diligent enforcement of Section 5286, Revised Statutes, prohibiting military expeditions. The law on that subject is announced in U. S. *vs.* Wiborg, 163 U. S. 632. The point involved in the present case is a different one, arising out of the operation of Section 5283, which solely applies to a public war and the fitting out of vessels to be used in the service of one of the powers at war.

On the other hand, it has never been questioned that the prohibition of military expeditions applies to times of peace as well as war. The statute does not make it necessary, in order to constitute a crime, that such expedition should be for the service of a foreign power.

We submit that the application for the *certiorari* should be denied.

W. HALLETT PHILLIPS,
For Appellees.

[Filed February 1, 1897, by the United States.]

STATUTES OF THE UNITED STATES; PROCLAMATIONS OF THE PRESIDENT OF JUNE 12, 1895, AND JULY 27, 1896, AND OPINION OF ATTORNEY GENERAL HOAR, DECEMBER 16, 1869, XIII, OP. 177.

Act of Congress of June 5, 1794. (*1 Stat. at L., p. 381–4.*)

An Act in addition to the act for the punishment of certain crimes against the United States.

Be it enacted and declared by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction of the same, accept and exercise a commission to serve a foreign prince or state in war by land or sea, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted and declared,* That if any person shall within the territory or jurisdiction of the United States enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided,* That this shall not be construed to extend to any subject or citizen of a foreign prince or state who shall transiently be within the United States and shall on board of any vessel of war, letter of marque or privateer, which at the time of its arrival within the United States was fitted and equipped as such, enlist or enter himself or hire or retain another subject or citizen of the same foreign prince or state, who is transiently within the United States, to enlist or enter himself to serve such prince or state on board such vessel of war, letter of marque or privateer, if the United States shall then be at peace with such prince or state: *And provided further,* That if any person so enlisted shall within thirty days after such enlistment voluntarily discover upon oath to some justice of the peace or other civil magistrate, the person or persons by whom he was so enlisted, so that he or they may be apprehended and convicted of the said offense; such person so discovering the offender or offenders shall be indemnified from the penalty prescribed by this act.

Sec. 3. *And be it further enacted and declared,* That if any person shall within any of the ports, harbors, bays, rivers or other waters of the

United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise or commit hostilities upon the subjects, citizens, or property of another foreign prince or state with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars and the term of imprisonment shall not exceed three years, and every such ship or vessel, with her tackle, apparel and furniture, together with all materials, arms, ammunition and stores which may have been procured for the building and equipment thereof shall be forfeited; one-half to the use of any person who shall give information of the offense, and the other half to the use of the United States.

Sec. 4. *And be it further enacted and declared*, That if any person shall within the territory or jurisdiction of the United States increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting the force of any ship of war, cruiser or other armed vessel which at the time of her arrival within the United States was a ship of war, cruiser or armed vessel in the service of a foreign prince or state or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the United States are at peace, by adding to the number or size of the guns of such vessel prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offending shall upon conviction be adjudged guilty of misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed one thousand dollars, nor the term of imprisonment be more than one year.

Sec. 5. *And be it further enacted and declared*, That if any person shall within the territory or jurisdiction of the United States begin or set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars nor the term of imprisonment be more than three years.

Sec. 6. *And be it further enacted and declared*, That the district courts shall take cognizance of complaints by whomsoever instituted,

in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sec. 7. *And be it further enacted and declared,* That in every case in which a vessel shall be fitted out and armed, or attempted so to be fitted out or armed, or in which the force of any vessel of war, cruiser or other armed vessel, shall be increased or argumented, or in which any military expedition or enterprise shall be begun or set on foot contrary to the prohibitions and provisions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as above defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser or other armed vessel of any foreign prince or state, or of the subjects or citizens of such prince or state, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States or of the militia thereof as shall be judged necessary for the purpose of taking possession of, and detaining any such ship or vessel, with her prize or prizes if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring such prize or prizes, in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories of the United States against the territories or dominions of a foreign prince or state, with whom the United States are at peace.

Sec. 8. *And be it further enacted and declared,* That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States or of the militia thereof as shall be necessary to compel any foreign ship or vessel to depart the United States, in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

Sec. 9. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by a treaty or other law of the United States.

Sec. 10. *And be it further enacted,* That this act shall continue and be in force for and during the term of two years, and from thence to the end of the next session of Congress, and no longer.*

APPROVED, June 5, 1794.

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*Continued in force by Act of March 2, 1797, 1 St., p. 497—made perpetual by Act of April 24, 1800, 2 St., p. 54.

Act of Congress of March 3, 1817. (3 Stat. at L., p. 370–1.)

An Act more effectually to preserve the neutral relations of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming, of any such ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities, or to aid or co-operate in any warlike measure whatever, against the subjects, citizens, or property, of any prince or state, or of any colony, district or people, with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years, and every such ship or vessel, with her tackle, apparel, and furniture, together with all the material, arms, ammunitions, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information, and the other half to the use of the United States.

Sec. 2. *And be it further enacted,* That the owners of all armed ships, sailing out of the ports of the United States, and owned wholly, or in part, by citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners in cruising or committing hostilities, or in aiding, or co-operating, in any warlike measure against the subjects, citizens, or property, of any prince or state, or of any colony, district or people, with whom the United States are at peace.

Sec. 3. *And be it further enacted,* That the collectors of the customs be, and they are hereby, respectively, authorized and required to detain any vessel manifestly built for war-like purposes, and about to depart from the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner, or owners, to cruise or commit hostilities upon the subjects, citizens, or property, of any prince or state, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereupon, or until the owner enters into

bond, and sureties, to the United States, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by the owner, or owners, in cruising or committing hostilities, or in aiding, or co-operating, in any warlike measure against the subjects, citizens or property, of any prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 4. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing, or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel in the service of a foreign prince, or state, or any colony, district, or people, or belonging to the subjects, or citizens, of any such prince, state, colony, district, or people, the same being at war with any foreign prince, or state, with whom the United States are at peace, by adding to the number or size of the guns of such vessels prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person, so offending, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned, at the discretion of the court in which the conviction shall be had, so that such fines shall not exceed one thousand dollars, nor the term of imprisonment be more than one year.

Sec. 5. *And be it further enacted,* That this act shall continue in force for the term of two years.

APPROVED, March 3, 1817.

Act of Congress of April 20, 1818. (3 Stat. at L., p. 448.)

An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted,* That if any person shall, within

the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district or people, who shall transiently be within the United States and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or retain another subject of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

Sec. 3. *And be it further enacted*, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States.

Sec. 4. *And be it further enacted*, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such

ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person, so offending, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sec. 5. *And be it further enacted*, That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person, so offending, shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Sec. 6. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are [at] peace, every person, so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

Sec. 7. *And be it further enacted*, That the district court shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sec. 8. *And be it further enacted*, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased, or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the

custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

Sec. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property, of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively, authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property, of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

Sec. 12. *And be it further enacted*, That the act passed on the fifth

day of June, one thousand seven hundred and ninety-four, entitled, "An act in addition to the act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the act of the second of March, one thousand seven hundred and ninety-seven, and perpetuated by the act passed on the twenty-fourth of April, one thousand eight hundred, and the act, passed on the fourteenth day of June, one thousand seven hundred and ninety-seven, entitled, "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act, passed the third day of March, one thousand eight hundred and seventeen, entitled, "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally, repealed: *Provided, nevertheless*, That persons having heretofore offended against any of the acts aforesaid, may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

Sec. 13. *And be it further enacted*, That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

APPROVED, April 20, 1818.

REVISED STATUTES OF THE UNITED STATES.

TITLE LXVII.

Neutrality.

Sec. 5281. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and imprisoned not more than three years.

Sec. 5282. Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and imprisoned not more than three years.

Sec. 5283. Every person who, within the limits of the United

States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Sec. 5284. Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war, or privateer, with intent that such vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or who takes command of, or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years. And the trial for such offence, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sec. 5285. Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Sec. 5286. Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be find not exceeding three thousand dollars, and imprisoned not more than three years.

Sec. 5287. (The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.) In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince, or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purposes of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

Sec. 5288. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

Sec. 5289. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her

armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 5290. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace until the decison of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

Sec. 5291. The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States, and [*enlist*] [enlists] or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

Act of March 10, 1838. (*5 Statutes at Large, p. 212.*)

An Act supplementary to an act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," approved twentieth of April, eighteen hundred and eighteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several collectors, naval officers, surveyors, inspectors of customs, the marshals, and deputy marshals of the United States, and every other officer who may be specially empowered for the purpose by the President of the United States, shall be, and they are hereby authorized and required to seize and detain any vessel or any arms or munitions of war which may be provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign prince

or state, or of any colony, district or people conterminous with the United States, and with whom they are at peace, contrary to the sixth section of the act passed on the twentieth of April, eighteen hundred and eighteen, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," and retain possession of the same until the decision of the President be had thereon, or until the same shall be released as hereinafter directed.

Sec. 2. *And be it further enacted*, That the several officers mentioned in the foregoing section shall be, and they are hereby respectively authorized and required to seize any vessel or vehicle, and all arms or munitions of war, about to pass the frontier of the United States for any place within any foreign state, or colony, conterminous with the United States, where the character of the vessel or vehicle, and the quantity of arms and munitions, or other circumstances shall furnish probable cause to believe that the said vessel or vehicle, arms or munitions of war are intended to be employed by the owner or owners thereof, or any other person or persons, with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or state, or any colony, district, or people conterminous with the United States, and with whom the United States are at peace, and detain the same until the decision of the President be had for the restoration of the same, or until such property shall be discharged by the judgment of a court of competent jurisdiction: *Provided*, That nothing in this act contained shall be construed to extend to, or interfere with any trade in arms or munitions of war, conducted in vessels by sea, with any foreign port or place whatsoever, or with any other trade which might have been lawfully carried on before the passage of this act, under the law of nations and the provisions of the act hereby amended.

Sec. 3. *And be it further enacted*, That it shall be the duty of the officer making any seizure under this act, to make application, with due diligence, to the district judge of the district court of the United States within which such seizure may be made, for a warrant to justify the detention of the property so seized; which warrant shall be granted only on oath or affirmation, showing that there is probable cause to believe that the property so seized is intended to be used in a manner contrary to the provisions of this act; and if said judge shall refuse to issue such warrant, or application therefor shall not be made by the officer making such seizure within a reasonable time, not exceeding ten days thereafter, the said property shall forthwith be restored to the owner. But if the said judge shall be satisfied that the seizure was justified under the provisions of this act, and issue his warrant accordingly, then the same shall be detained by the officer so seizing said property, until the President shall order it to be restored to the owner or claimant, or until it

shall be discharged in due course of law, on the petition of the claimant, as hereinafter provided.

Sec. 4. *And be it further enacted*, That the owner or claimant of any property seized under this act, may file his petition in the circuit or district court of the United States, in the district where such seizure was made, setting forth the facts in the case; and thereupon such court shall proceed, with all convenient dispatch, after causing due notice to be given to the district attorney and officer making such seizure, to decide upon the said case, and order restoration of the property, unless it shall appear that the seizure was authorized by this act; and the circuit and district courts shall have jurisdiction, and are hereby vested with full power and authority to try and determine all cases which may arise under this act; and all issues in fact arising under it, shall be decided by a jury, in the manner now provided by law.

Sec. 5. *And be it further enacted*, That whenever the officer making any seizure under this act shall have applied for and obtained a warrant for the detention of the property, or the claimant shall have filed a petition for its restoration and failed to obtain it, and the property so seized shall have been in the custody of the officer for the term of three calendar months from the date of such seizure, it shall and may be lawful for the claimant or owner to file with the officer a bond to the amount of double the value of the property so seized and detained, with at least two sureties, to be approved by the judge of the circuit or district court, with a condition that the property, when restored, shall not be used or employed by the owner or owners thereof, or by any other person or persons with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or state, or any colony, district, or people, conterminous with the United States, with whom the United States are at peace; and thereupon the said officer shall restore such property to the owner or claimant thus giving bond: *Provided*, That such restoration shall not prevent seizure from being again made, in case there may exist fresh cause to apprehend a new violation of any of the provisions of this act.

Sec. 6. *And be it further enacted*, That every person apprehended and committed for trial, for any offense against the act hereby amended, shall, when admitted to bail for his appearance, give such additional security as the judge admitting him to bail may require, not to violate or aid in violating, any of the provisions of the act hereby amended.

Sec. 7. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that the provisions of this act have been, or are likely to be violated, that offenses have been, or are likely to be, committed against the provisions of the act hereby amended, within any judicial district, it shall be lawful

for him, in his discretion, to direct the judge, marshal and district attorney, of such district to attend at such place within the district, and for such time, as he may designate, for the purpose of the more speedy and convenient arrest and examination of persons charged with the violation of the act hereby amended; and it shall be the duty of every such judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

SEC. 8. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation, and to enforce the due execution of this act, and the act hereby amended.

SEC. 9. *And be it further enacted*, That this act shall continue in force for the period of two years and no longer.

APPROVED, March 10, 1838.

[NEUTRALITY—CUBA.]

BY THE PRESIDENT OF THE UNITED STATES. A PROCLAMATION.

Whereas, the island of Cuba is now the seat of serious civil disturbances accompanied by armed resistance to the authority of the established government of Spain, a power with which the United States are and desire to remain on terms of peace and amity; and,

Whereas, the laws of the United States prohibit their citizens, as well as all others being within and subject to their jurisdiction, from taking part in such disturbances adversely to such established government, by accepting or exercising commissions for warlike service against it, by enlistment, or procuring others to enlist for such service, by fitting out or arming or procuring to be fitted out and armed, ships of war for such service, by augmenting the force of any ship of war engaged in such service and arriving in a port of the United States, and by setting on foot or providing or preparing the means for military enterprises to be carried on from the United States against the territory of such government;

Now, therefore, in recognition of the laws aforesaid and in discharge of the obligation of the United States towards a friendly power, and as a measure of precaution, and to the end that citizens of the United States and all others within their jurisdiction may be deterred from subjecting themselves to legal forfeitures and penalties,

I, Grover Cleveland, President of the United States of America, do hereby admonish all such citizens and other persons to abstain

from every violation of the laws hereinbefore referred to, and do hereby warn them that all violations of such laws will be rigorously prosecuted; and I do hereby enjoin upon all officers of the United States charged with the execution of said laws the utmost diligence in preventing violations thereof and in bringing to trial and punishment any offenders against the same.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twelfth day of June, in the year of our Lord one thousand eight hundred and [SEAL] ninety-five, and of the Independence of the United States of America the one hundred and nineteenth.

GROVER CLEVELAND.

By the President:

RICHARD OLNEY,

Secretary of State.

[NEUTRALITY.]

BY THE PRESIDENT OF THE UNITED STATES. A PROCLAMATION.

Whereas by a proclamation dated the twelfth day of June, A. D. 1895, attention was called to the serious civil disturbances accompanied by armed resistance to the established Government of Spain then prevailing in the island of Cuba, and citizens of the United States and all other persons were admonished to abstain from taking part in such disturbances in contravention of the neutrality laws of the United States; and

Whereas said civil disturbances and armed resistance to the authority of Spain, a power with which the United States are on terms of peace and amity, continue to prevail in said Island of Cuba; and

Whereas since the date of said proclamation said neutrality laws of the United States have been the subject of authoritative exposition by the judicial tribunal of last resort, and it has thus been declared that any combination of persons organized in the United States for the purpose of proceeding to and making war upon a foreign country with which the United States are at peace and provided with arms to be used for such purpose constitutes a "military expedition or enterprise" within the meaning of said neutrality laws, and that the providing or preparing of the means for such "military expedition or enterprise," which is expressly prohibited by said laws, includes furnishing or aiding in transportation for such "military expedition or enterprise;" and

Whereas by express enactment, if two or more persons conspire

to commit an offense against the United States, any act of one conspirator to effect the object of such conspiracy renders all the conspirators liable to fine and imprisonment; and

Whereas there is reason to believe that citizens of the United States and others within their jurisdiction fail to apprehend the meaning and operation of the neutrality laws of the United States as authoritatively interpreted as aforesaid, and may be misled into participation in transactions which are violations of said laws and will render them liable to the severe penalties provided for such violations;

Now, therefore, that the laws above referred to as judicially construed may be duly executed, that the international obligations of the United States may be fully satisfied, and that their citizens and all others within their jurisdiction, being seasonably apprised of their legal duty in the premises, may abstain from disobedience to the laws of the United States and thereby escape the forfeitures and penalties legally consequent thereon;

I, Grover Cleveland, President of the United States, do hereby solemnly warn all citizens of the United States and all others within their jurisdiction against violations of the said laws interpreted as hereinbefore explained, and give notice that all such violations will be vigorously prosecuted. And I do hereby invoke the cooperation of all good citizens in the enforcement of said laws and in the detection and apprehension of any offenders against the same, and do hereby enjoin upon all the executive officers of the United States the utmost diligence in preventing, prosecuting, and punishing any infractions thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-seventh day of July, in the year of our Lord one thousand eight [SEAL] hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

GROVER CLEVELAND.

By the President:

RICHARD OLNEY,
Secretary of State.

OPINION OF ATTORNEY GENERAL HOAR CITED WITH APPROVAL BY THE COURT IN WIBORG vs. UNITED STATES, (163 U. S. p. 647).

Reprinted from 13 Op., p. 177–181.

ATTORNEY GENERAL'S OFFICE,
December 16, 1869.

SIR: In compliance with your oral request, I send you in writing my opinion upon the question whether it is proper for the

United States to cause a libel to be filed under the 3d Section of the statute of April 20, 1818, entitled "An act in addition to 'An act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned," against the gunboats building in New York for the Spanish Government, on the ground that they are procured to be fitted out and armed with intent that they shall be employed in the service of Spain, a foreign state, with intent to cruise or commit hostilities against the subjects, citizens or property of a "colony, district or people" with whom the United States are at peace, namely, a "colony, district, or people" claiming to be the Republic of Cuba.

The statute of 1818 is sometimes spoken of as the Neutrality Act; and undoubtedly its principal object is to secure the performance of the duty of the United States, under the law of nations, as a neutral nation in respect to foreign powers. But it is an act to punish certain offenses against the United States by fines, imprisonments and forfeitures, and the act itself defines the precise nature of those offenses. The United States have not recognized the independent national existence of the island of Cuba, or any part thereof, and no sufficient reason has yet been shown to justify such a recognition. In the view of the Government of the United States, as a matter of fact, which must govern our conduct as a nation, the island of Cuba is a territory under the Government of Spain, and belonging to that nation.

If ever the time shall come when it shall seem fitting to the political department of the Government of the United States to recognize Cuba as an independent government, entitled to admission into the family of nations, or, without recognizing its independence, to find that an organized government capable of carrying on war, and to be held responsible to other nations for the manner in which it carries it on, exists in that island, it will be the duty of that department to declare and act upon those facts. But before such a state of things is found to exist, it is not, in my judgment, competent for a court to undertake to settle those questions. The judicial tribunals must follow and conform to the political action of the Government in regard to the existence of foreign states, and our relations to them; and it would, in my opinion, be inconsistent with the honor and dignity of the United States to submit to a court, and allow to be declared and acted upon, in such an indirect manner, rights and duties toward a foreign nation which the Government is not prepared distinctly and upon its own responsibility to avow and maintain.

It has been brought to my notice, as to yours, by persons who profess to represent the Cuban insurgents, that libels have already been filed in the courts of the United States, under the statute of 1818, to procure the condemnation of vessels on the ground that they were being fitted out and armed with intent to be employed

in the service of a "colony, district, or people," namely, the "colony, district, or people" of Cuba, with intent to cruise and commit hostilities against the subjects of Spain, a nation with whom we are at peace; and it is argued that this involves what is claimed to be the converse of the proposition, that, as we assert in those libels that Cuba is a "colony, district, or people," capable of committing hostilities against Spain, the law equally applies to an armament procured or fitted out by Spain for the purpose of hostilities against Cuba, and that the Executive Government, by filing these libels, have virtually recognized the "colony, district, or people" of Cuba as belligerents.

This argument seems to me to involve an erroneous legal notion, and to be based upon the idea that the Statute of 1818, being an act to protect and enforce the neutrality of the United States, cannot be applied except where there are independent parties to a contest entitled to equal rights. But this, I think, is an opinion wholly unsound. Undoubtedly the ordinary application of the statute is to cases where the United States intends to maintain its neutrality in wars between two other nations, or where both parties to a contest have been recognized as belligerents, that is, as having a sufficiently organized political existence to enable them to carry on war. But the statute is not confined in its terms, nor, as it seems to me, in its scope and proper effect, to such cases. Under it, any persons who are insurgents or engaged in what would be regarded under our law as levying war against the sovereign power of the nation, though few in number and occupying however small a territory, might procure the fitting out and arming of vessels with intent to cruise or commit hostilities against a nation with which we were at peace, and with intent that they should be employed in the service of a "colony, district, or people" not waging a recognized war. The statute would apply to the case of an armament prepared in anticipation of an insurrection or revolt in some district or colony which it was intended to excite, and before any hostilities existed.

But, on the other hand, when a nation with which we are at peace, or the recognized government thereof, undertakes to procure armed vessels for the purpose of enforcing its own recognized authority within its own dominions, although there may be evidence satisfactory to show that they will aid the government in the suppression of insurrection or rebellion, in a legal view this does not involve a design to commit hostilities against anybody. If the illicit distillers of any section of the United States combine together to resist by force the collection of the revenue, and arm themselves for this purpose with the intent to set at defiance permanently and by force the laws of the United States, they may be levying war against the Government; but when the Government sends its officers to disperse or arrest the offenders, although it may find it necessary to employ military force in aid of its authority, it certainly

cannot be considered as committing hostilities against the territory over which such operations extend.

The question of belligerency between organized communities is a question of fact, and may be one of the gravest facts upon which a nation is called to decide and act. The concession of belligerent rights to a "colony, district, or people" in a state of insurrection or revolution, necessarily involves serious restrictions upon the ordinary rights of the people of this country to carry on branches of manufacture and trade which are unrestricted in time of peace. To prevent our mechanics and merchants from building ships of war and selling them in the markets of the world, is an interferance with their private rights which can only be justified on the ground of a paramount duty in our international relations; and however much we may sympathize with the efforts of any portion of the people of another country to resist what they consider oppression or to achieve independence, our duties are necessarily dependent upon the actual progress which they have made in reaching these objects.

This subject, as you are well aware, is one to which long and careful consideration has been applied, and the result which I have thus briefly stated, and which might receive much fuller statement and illustration, is that upon which the administration have acted. I trust that I have made my view of the law intelligible, and have the honor to be,

Very respectfully,

E. R. HOAR.

Hon. HAMILTON FISH,
Secretary of State.

[NOTE: The following brief was prepared for the preliminary hearing but was not filed or brought to the attention of the court.]

In the Supreme Court of the United States. October Term, 1896.

THE UNITED STATES, APPELLANT,
vs.
THE STEAMER "THREE FRIENDS," HER TACKLE, APPAREL, FURNITURE.

BRIEF OF CALDERON CARLISLE, AS AMICUS CURIÆ, RESPECTFULLY OFFERED TO THE COURT, ON THE APPLICATION FOR CERTIORARI IN THE ABOVE ENTITLED CAUSE.

The undersigned respectfully asks the leave of the court to submit this brief as *amicus curiæ*.

Having in the line of professional duty studied the subject in hand he ventures, with diffidence, to hope that he may afford some aid to the court as one of its officers.

This case is pending in the Circuit Court of Appeals for the Fifth Circuit, on appeal from the District Court of the United States for the Southern District of Florida, from a decree dismissing the libel. It is a civil cause in admiralty in which the decree of the circuit court of appeals is made final by the Organic Act, but no order or decree has been passed by the circuit court of appeals.

The libel was for forfeiture under Section 5283 of the Revised Statutes, and was dismissed because it did not state "that the vessel was to be employed in the service of any foreign prince or state, or of any colony, district, or people recognized as such by the political power of the United States."

Public importance at this time of a decision of this case by this court.

Whichever way the circuit court of appeals may decide the question before it, the cause could be brought here by *certiorari* on the application of either party, and it appears to be a matter of the highest public importance both to the department charged with the administration of the foreign relations of the Government and to that upon which devolves the administration of the laws of the United States imposing penalties and forfeitures, that an authoritative exposition of our law should be made at this particular time by the court of last resort.

For grave public reasons the Secretary of State has requested that an application be made at once for a writ of *certiorari*, and the Attorney General, concurring in this opinion, and believing the present to be one of the exceptional cases which warrant the issuance

of such a writ without awaiting the decision of the lower appellate court, has presented this application.

Power of this court to issue the writ in advance of any action by the Circuit Court of Appeals.

The inclination of this court has been not to issue the writ of *certiorari* to a circuit court of appeals in advance of a decision by such court; but it has been expressly ruled that this court has power to bring up a case by *certiorari*, or otherwise, under the sixth section of the Judiciary Act of 1891, "at any stage."

Mr. Justice Gray, in the case of the American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway Company, speaking for the court (148 U. S.), says, page 385: "The question at what stage of the proceedings and under what circumstances the case should be required, by *certiorari* or otherwise, to be sent up for review is left to the discretion of this court as the exigencies of each case may require."

The conclusion just stated is arrived at after a careful consideration of the provisions of the Judiciary Act of 1891. The court is considering its power in an exceptional case. "In such an exceptional case, the power and the duty of this court to require, by *certiorari* or otherwise, the case to be sent up for review and determination, cannot well be denied, as will appear if the provision now in question is considered in connection with the preceding provisions for the interposition of this court in cases brought before the circuit court of appeals. In the first place, the circuit court of appeals is authorized 'in every such subject within its appellate jurisdiction,' and 'at any time,' to certify to this court 'any questions or propositions of law,' concerning which it desires the instruction of this court for its proper decision. In the next place, this court, at whatever stage of the case such questions or propositions are certified to it, may either gives its instructions thereon, or may require the whole record and cause to be sent up for its consideration and decision. Then follows the provision in question conferring upon this court authority 'in any such case as is hereinbefore made final in the circuit court of appeals,' to require by *certiorari* or otherwise, the case to be certified to this court for its review and determination. There is nothing in the act to preclude this court from ordering the whole case to be sent up, when no distinct questions of law have been certified to it by the circuit court of appeals, at as early a stage as when such questions have been so certified. The only restriction upon the exercise of the power of this court, independently of any action of the circuit court of appeals,' in this regard, is to cases 'made final in the circuit court of appeals,' that is to say, to cases in which the statute makes the judgment of that court final, not to cases in which that court has rendered a final judgment.

"Doubtless this power would seldom be exercised before final judgment in the circuit court of appeals, and very rarely indeed before the case was ready for decision upon the merits in that court."

"But," the court concludes, "the question at what stage and under what circumstances the case should be required by *certiorari* or otherwise to be sent up for review," is a question not dpendent on any conditions prescribed by Congress nor upon any proceedings in the circuit court of appeals, but a question which "is left to the discretion of the court as the exigencies of each case may require."

The exigencies of this case justify the exercise of the court's undoubted power.

If the correctness of the decision below, which can only be finally determined by this court, is of grave importance at this particular time to the administration of justice and of the foreign affairs of the country, there would seem to be presented in this case exigencies which must rarely be equalled.

That such exigencies do exist in this case must be treated by the court as an established fact in view of the petition of the Attorney General of the United States, filed at the request of the Secretary of State.

At the date of the opinion of Mr. Justice Gray, above cited, only two writs of *certiorari* had been granted, and one of these was in the case of Lau Ow Bew, which, as the court said, page 383: "Involved a grave question of public international law affecting the relations between the United States and a foreign power."

In the case of the "Itata" application for *certiorari* was made at October Term, 1892, in advance of a decision by the circuit court of appeals. The application was denied without prejudice and was never renewed.

It is to be noted in regard to the "Itata" application, first, that the unrecognized power in whose service the "Itata" had been employed had before October, 1892, become the recognized government of Chile; second, that it did not appear on the face of the application or otherwise that it was made at the request or with the knowledge and consent of the Department of State, that there were any exigencies requiring immediate action by the court or that the case involved any grave questions affecting the relations between the United States and a foreign government. It is further to be noted that in the "Itata" case the district court while discussing the question now decided by Judge Locke in construing Section 5283 of the Revised Statutes, did not decide that question, but dismissed the libel on its merits. And the circuit court of appeals afterwards, in 1893, disposed of the case in the same manner as the lower court.

It is respectfully submitted that the present application of the Attorney General disclosing on its face that it is made at the request of the Secretary of State, should induce the court to issue the

writ of *certiorari* to bring up the case of the "Three Friends" for review on a question which deeply concerns the administration of justice and the conduct of the foreign relations of the Government in the United States, at this particular time.

The question involved is whether the neutrality laws of the United States and particularly Section 5283, R. S., cover the case of the Cuban insurrection, the existence of which has been proclaimed by the President on June 12, 1895, and July 27, 1896.

Judge Locke has held that Section 5283 does not apply to a vessel fitted out and armed within the territory of the United States with intent that she shall be employed "in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain in the island of Cuba, with whom the United States are and were at that date at peace" because the libel "does not allege that said vessel had been fitted out with intent that she be employed in the service of any foreign prince or state, or of any colony, district or people recognized as such by the political power of the United States."

It is submitted that the learned judge has superadded a requirement which is not to be found either in the words or the intent of the legislature.

Of the question decided Judge Locke himself says: "This question has been before the courts frequently, and several times been examined and commented upon, but in no case which I have been able to find has it been so presented, unconnected with questions of fact, that there has been a ruling upon it so that it can be considered as final and conclusive."

It is to be noted, however, that in at least three instances there have been condemnations under Section 5283, where the vessels, munitions, etc., condemned were intended to be employed in the service of insurgents who had not been recognized by this Government, either as a body politic or belligerents.

These cases are "Mary N. Hogan," 18 Fed. Rep., p. 529; United States *vs.* One Hundred Kegs of Powder and Two Hundred and Fourteen Boxes of Arms, 29 Fed. Rep., p. 50, and the "City of Mexico," 28 Fed. Rep., p. 148.

The decision of Judge Locke in the present case is the first which has put upon Section 5283 the construction that the colony, district or people in whose service the armed vessel was to be employed must be recognized as such by the political power of the Government of the United States, and his decision in this case directly overrules his decision, in 1886, in the case of the "City of Mexico."

The "City of Mexico" was proceeded against before the same judge, and in the same court, for piratical aggression under one libel, and for violation of Section 5283 under a second libel. The first

was dismissed by Judge Locke; and, under the second, the vessel was condemned, although, to use his own language "there was no war in that part of the world going on, or in contemplation, except what was intended by General Delgado."

The only "colony, district or people" in whose service the vessel was intended to be employed were General Delgado and his associates.

The words "any colony, district or people" aptly designate any communities or individuals not recognized as political powers.

The words "colony, district or people" were first introduced into the Statutes of the United States by the Act of March 3, 1817 (3d Stat. at L., p. 370). The history of this act was spread before the world by the United States at Geneva (Case of U. S., pp. 138–9): "The facts appear to be these: On the 20th December, 1816, the Portuguese Minister informed the then Secretary of State (Mr. Monroe) of the fitting out of privateers at Baltimore to act against Portugal, in case it should turn out that the Government was at war with the 'self-styled government of Buenos Ayres.' He further stated that he did not make the application in order 'to raise altercations or to require satisfaction,' but that he solicited 'the proposition to Congress of such provisions by law as will prevent such attempts for the future,' being 'persuaded that my (his) magnanimous sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States.' Mr. Monroe replied, on the 27th of the same month, 'I have communicated your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the executive power as will be necessary to preserve the strict neutrality of the United States, . . . and effectually to guard against the danger in regard to the vessels of your Sovereign which you have anticipated.' The Act of 1817 was passed and officially communicated to the Portuguese Minister on the 13th of March, 1817."

This act was limited to two years and was repealed by the permanent Act of April 20, 1818—substantially re-enacting the provisions of the law of 1817.

The words "colony, district or people" have been since retained in all subsequent legislation on this subject. The words occur in the act passed in 1838, which was only in force for two years—the Case of the United States at Geneva, pp. 133 and 134, give the following history of the act: "The Act of 1838 was enacted on the suggestion of Great Britain: In the year 1837 a formidable rebellion against Great Britain broke out in Canada. Sympathizers with the insurgents beginning to gather on the northern frontier of the United States, Mr. Fox, the British Minister at Washington, 'sol-

emnly appealed to the Supreme Government promptly to interpose its sovereign authority for arresting the disorders,' and inquired what means it proposed to employ for that purpose. The President immediately addressed a communication to Congress, calling attention to defects in the existing statute, and asking that the Executive might be clothed with adequate power to restrain all persons within the jurisdiction of the United States from the commission of acts of the character complained of. Congress thereupon passed the Act of 1838."

It can hardly be said that the United States recognized the Canadian insurgents, as a "political power" by this act. The President in his message had said to Congress that the existing laws were inadequate and applicable to the punishment of offenders, but that what was needed was additional means of prevention. Nobody suggested in Congress that the existing laws did not apply to Canadian insurgents, and that they only applied to recognized belligerents. The suggestion would have been most pertinent if it had occurred to anybody because Congress was invited to give greater powers to the Executive for the prevention of offenses against existing laws. The President and Congress both in effect asserted that existing laws applied to the Canadian insurgents, that there was ample provision for the punishment but not for the prevention of violation of existing laws. No new offense was created by the Act of 1838, but Congress itself by that act applied the provisions of the Act of 1818 to the case of unrecognized Canadian insurgents.

The words "prince or state" cover every political power recognized as such by the United States.

The words used in the original Neutrality Act of 1794, "prince or state," cover every recognized political power known to the law of nations.

In the first section of the Act of 1818, now Section 5281 of the Revised Statutes, the same provisions were contained as in the first section of the Act of June 5th, 1794, except that the commission therein prohibited was not limited to a commission to serve a foreign prince or state, but was forbidden in the case of a foreign colony, a foreign district, or a foreign people, who in the sense of the law of nations could only be known to the United States as portions of the territory, or citizens, or subjects of some foreign prince or state. The same modification of the second section of the Act of 1794 was made by the second section of the Act of 1818, now Section 5282.

In the third section of the Act of 1818, now Section 5283 of the Revised Statutes, an additional modification is introduced. Instead of continuing after the words "prince" and "state," the additional words superadded in the preceding section, the words "or of any" are inserted after the words "prince" and "state," a comma follows the word "state," and the succeeding words are separated from the qualification "foreign," left to apply to "prince or state," but excluded

by the words "or of," and the broad word "any" from application to the words "colony, district or people," which follow.

The sovereign rights of peace and war belong, within the territory of the United States, exclusively to Federal Government. They are not there to be exercised by or in the service of any foreign prince or state, or of any colony, district, or people, foreign or domestic.

The usual form of treaties of peace is that of the treaty with Spain of 1795: "There shall be a firm and inviolable peace and sincere friendship between his Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places."

The same form of expression is repeated in the treaty between Spain and the United States of 1819. The peace provided for by this treaty is a peace between the United States and their citizens, and every colony, district or people within the territory, jurisdiction or control of the United States, and the King of Spain, and his subjects and every colony, district or people within his territory, jurisdiction or control.

The whole purpose of the so-called Neutrality Laws of the United States from 1794 down to the present day was to prevent the citizens or inhabitants of the United States from making war upon any nation, or upon the citizens or parts of such nation, with whom the United States were at peace. The original act, by its broad enumeration of only foreign princes or states, made possible certain technical objections in proceedings in municipal courts, which would tend to defeat the purpose of Congress in passing the act. The situation of the colonies, districts or peoples in South America naturally attracted by the attention of the legislature, but Congress did not by any apt words in any wise limit or control the words "colony, district or people," or make any requirements as to political recognition.

In Section 1 of the Act of March 3, 1817, and in Section 3 of the Act of 1818, now Section 5283 of the Revised Statutes of the United States, it was plainly declared that it should be unlawful within the limits of the United States to fit out and arm, or procure to be fitted out and armed, or knowingly to be concerned in the furnishing, fitting out or arming of any vessel, with intent that such vessel shall be employed in the service, not only of any foreign prince or state, which description includes every form of foreign government known to the law of nations, and recognized by the United States as a foreign government, but in the service of any colony, any district, or any people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace.

If a foreign colony, district or people are still for every purpose a part of the mother country, the United States are at peace with them by reason of their engagements with the mother country, and

the legislature has borbidden the employment in their service of a vessel to cruise or commit hostilities against the subjects, citizens or property of the prince or state, to which they belong.

If the colony, district or people has in any way, or for any purpose, separated itself or themselves, from the mother country, the prohibited acts are none the less, and not a whit more, forbidden by the plain provisions of the act. What the United States is interested in is that no acts of war shall be committed from her territories against any foreign prince or state, or any part of the territory of any foreign prince or state, or against the subjects or citizens of any foreign prince or state, or against the property of any foreign prince or state, or of any colony, district or people with whom the United States are at peace, by any person whatsoever, acting on his own authority, or on that of some foreign prince or state, or of any colony, district or people. The United States alone holds within her territory the sovereign right of war, and as a matter of reasonable municipal administration it was proper to provide for the punishment of every unauthorized act, which should either in itself amount to war or have a tendency to provoke war. The acceptance and exercise of a commission to serve in war, the enlistment of troops or sailors, the furnishing, fitting out or arming of any ship or vessel to cruise or commit hostilities, augmentation of force of any armed vessel, the beginning, setting on foot, providing or preparing the means for, any military expedition or enterprise were all acts, which the United States could not suffer any individual or collection or collection of individuals, whether citizens or foreigners, or any prince or state, or part of the territory of a prince or state, to do of their own authority within the territories of the United States, and having the clear right to forbid all of these acts, and the clear duty to itself and to foreign nations, to prevent unauthorized acts from disturbing its peaceful relations, it has distinctly forbidden to everybody every form of warfare from its territories against every foreign nation, with whom it is at peace, and against all the subjects, citizens, parts and divisions of those nations.

If, as can hardly be doubted, this is the clear intent of the legislation of the United States, plainly expressed in its laws, what a monstrous suggestion it is that acts of war may be innocent, when committed in favor of, or in the service of, unrecognized insurgents, as to whom the United States deny to the mother country all rights of war upon the high seas, leaving her to deal as best she may with the insurrection within her borders, but that similar acts would become criminal under the municipal laws of the United States the moment the United States accorded belligerent rights, or recognized in any other qualified form the insurgents as distinct from the Spanish Government.

Distinction between "the service of" and "hostilities against" any colony, district, or people.

The statute uses the words "colony, district, or people" in two relations:

First, that the vessel is to be employed "in the service of any foreign prince or state, or of any colony, district, or people."

Second, that the intent must be "to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district or people with whom the United States are at peace."

Under the first relation, it is as clearly applicable to an insurrection as to a war, the enumeration being intended to prohibit the fitting out, etc., within the territory of the United States of vessels to cruise or commit hostilities in the service of any foreign nation, recognized as such by the political power of the United States, all of which they fully, accurately and exhaustively describe under the words "prince or state," or in the service of any fraction of a foreign power not recognized as such by the political authorities of the United States, or of any colony, district, or people, whether the "colony" of a foreign country anticipating insurrection, or already in a state of insurrection; or a "district" of a foreign country; or a "people" in a foreign country; or in the service of a colony of individuals, native or foreign, about to go out from the territory of the United States to commit hostilities, to establish themselves by force against, and within the territory of, a friendly foreign government, or any part of it; or in the service of any district of the United States (none of which districts have power of peace and war), whether it be a judicial district, as the Southern District of Florida, a geographical district as the district south of Mason and Dixon's Line, or a constitutional district, as the District of Columbia; or in the service of any people, the people of a foreign prince or state, the "people of any portion of the territory of a foreign prince or state, the "people" of the United States, or any portion thereof, or even in the service of some unknown, unrecognized "people" in the heart of Africa.

There is no indication of any intent, and no requirement in any of the words used, that the colony, district or people in whose service the vessel was to be employed should be recognized as such by the political power of the United States.

When, however, the words "colony, district or people" are construed in their other relation, in connection with the word "hostilities," then it may be important that belligerency should be recognized. A sovereign lawfully suppressing insurrection within his own borders, so long as the insurrection is not recognized as a civil war, conferring belligerent rights upon the insurgents cannot be said to be committing hostilities. See opinion of Attorney General Hoar, 13 Op., p. 177.

The moment such belligerency is recognized he is committing hostilities and the law applies to his acts, as well as to those of the insurgents, not because Congress has required any action by the political department to explain its meaning or apply its law, but because the political department having taken a step with certain recognized consequences under the law of nations, those consequences follow, and what were not hostilities before, come to be such.

The words "to cruise" can only be applicable where the colony, district or people against which the cruising is to be done, has a naval power, or a commerce afloat, and when the nation fitting out the cruiser is undertaking to exercise rights of war on the high seas. It cannot apply to a patrol of a nation's own coast, and wherever the word "cruise" would properly apply to the mother country it might be said that the belligerency of the colony, district or people against whom the cruising was to be done, must, in the sense of the statute, be necessarily recognized. Respectfully submitted.

CALDERON CARLISLE.

ORAL APPLICATION OF ATTORNEY GENERAL FOR WRIT OF CERTIORARI, AND DECISION OF COURT GRANTING WRIT.

WASHINGTON, D. C., Monday, February 1st, 1897.

The ATTORNEY GENERAL. If the court please, on Friday last I made an application for a writ of *certiorari* in the case of the United States *vs.* The Steamer "Three Friends," which was ordered to stand over until to-day. I desire now to renew the application and say a few words in support of it.

Mr. CHIEF JUSTICE FULLER. All the papers are in print, I suppose?

The ATTORNEY GENERAL. They are all in print, your honor. The application is made because the matter is of grave public interest.

Mr. CHIEF JUSTICE FULLER. This course is unusual where everything is in print.

The ATTORNEY GENERAL. I know it is unusual for the court to hear oral argument on such applications. There are printed briefs on the question of *certiorari*, but as I stated the other day, I make also an application to assign this case for as speedy a hearing as is possible, notwithstanding the coming vacation, and what I want to say is upon that point——

The CHIEF JUSTICE. Very well.

The ATTORNEY GENERAL. The right of this court to issue a writ of *certiorari* to the circuit court of appeals——

The CHIEF JUSTICE. Is the record here?

The ATTORNEY GENERAL. The record which we have filed with this application is a duplicate of the transcript which was sent from the district court and has been filed in the circuit court of appeals.

The CHIEF JUSTICE. I do not know but that I ought to call your

attention to the rule which provides that the record of the circuit court of appeals must be filed with the application, but this may be exceptional.

The ATTORNEY GENERAL. It is exceptional; this case has been appealed to the circuit court of appeals, and it is manifest that the record which we present is a copy of the record which was sent by the district court to the circuit court of appeals, lacking only the certificate of the clerk of that court. This appeal to the circuit court was only taken on the 28th of January.

Now, the full power of this court to send a writ of *certiorari* to the circuit court of appeals when no step has been taken in that court is clearly established by the opinion of Mr. Justice Gray, concurred in by all the other justices, in the case of the American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway, and upon that I have rested this portion of the application.

It is unusual to apply in advance of any action by the circuit court of appeals for the writ of *certiorari*, and if this were a private case, or if the questions involved were mere questions of law, however generally important, I should not make this application.

I make the application for a speedy hearing upon the ground, also stated by the court in 144 United States, referring to a similar case of *certiorari*, as being one of the two cases in which the power has been exercised; that this case, like that, is "a case which involved a grave question of public international law, affecting the relations between the United States and a foreign country." This case was that of Lau Ow Bew, involving the construction of a treaty.

Now, if the court please, you will take judicial notice of the fact that there is now a most difficult and delicate situation, involving the issues of peace and war, and the possible result of an appeal to the tribunal of nations, and the only means at hand for enforcing the international obligations of the United States are the criminal and the neutrality laws which involve the forfeiture of vessels in cases of certain acts.

The district court in Florida has decided that the Cuban insurrectionists are not a colony, district, or people, within the meaning of the act which prohibits the fitting out of vessels for warlike purposes. R. S. 5283.

The necessity for an immediate decision by this court is that like cases are likely to arise at all points on the coast.

In view of this decision of the district court, the liklihood is greatly increased, and it is absolutely essential for the proper discharge of the duties of the Executive that the laws in this respect should be not only settled by this court, but settled as promptly as possible.

This is not a private question. The rights of the defendants in the vessel are insignificant, and they ought not to resist this application; there is no occasion for delay, for they will not be injured by a speedy hearing and a proper decision of the case by this court.

Your honors granted an application last year to set out of its order, and hear, as I remember, at a time during the vacation of the court, the case of Wiborg, the prompt decision of which was of the greatest aid to the Executive, which was thus informed what the law was.

I now ask the court with great reluctance, but impelled by the grave reasons which led me to make the application for a writ of *certiorari*, to assign this case for hearing at as early a day as is consistent with the preparation of the case, notwithstanding the imminence of the vacation.

Mr. WILLIAM HALLETT PHILLIPS. May it please your honors, I understand on an application of this sort everything in the way of an argument must be in print, and everything I have to say in opposition I have said in the brief which I have submitted to your honors.

The CHIEF JUSTICE. What is your position with reference to setting the case? Have you any suggestions?

Mr. PHILLIPS. None, your honor. If your honors think this case a proper one to advance, and one in which it is proper to grant the writ of *certiorari*, I leave that matter to your honors. Of course, I should like to have a little time.

The CHIEF JUSTICE. What do you call a reasonable time?

Mr. PHILLIPS. Well, I should say three weeks. If the case is of the grave importance stated by the United States, it is certainly proper that time should be given counsel to prepare.

The CHIEF JUSTICE. What do you say, Mr. Attorney, as to time?

The ATTORNEY GENERAL. The Government can be ready in a week to present the matter fully.

The CHIEF JUSTICE. We will take the application under advisement.

Thereupon the court transacted other business, having no relation to this case, and upon the completion thereof took a recess.

The court again comes in, and the following announcement is thereupon made:

The CHIEF JUSTICE. United States *vs.* The Steamer "Three Friends," etc. The application for writ of *certiorari* is granted, and the case is set for argument on the third Monday of February—the 15th of February.

TRANSCRIPT OF RECORD.

District Court of the United States, Southern District of Florida.
In Admiralty.

Be it remembered, that on the 12th day of November, A. D. 1896, the United States of America, by its attorneys, Frank Clark and H. H. Buckman, Esqs., filed in the office of the clerk of the said court, of Jacksonville, a libel of information against the steamship "Three

Friends," her boats, tackle, engines, boilers, apparel, and furniture, in a cause of forfeiture, in the words and figures following, to wit:

In the District Court of the United States, Southern District of Florida. In Admiralty.

To the Honorable James W. Locke, judge of said court:

The libel of information of Frank Clark and H. H. Buckman, attorneys for the said United States for the southern district of Florida, who prosecutes on behalf of the United States, and being present here in court in their proper persons, in the name and on the behalf of the United States, against the steamer "Three Friends," her engines, tackle, apparel, and furniture, and against all persons intervening for their interests therein, in a cause of forfeiture, alleges and informs as follows:

First. That Cyrus R. Bisbee, collector of customs for the district of St. Johns, heretofore, to wit, on the 7th day of November, in the year of our Lord eighteen hundred and ninety-six, and within the southern district of Florida, on the waters that are navigable from the sea by vessels of ten or more tons burthen, to wit, at or near the mouth of the St. Johns river, within said district of St. Johns and said southern district aforesaid, seized, as forfeited to the use of the United States, the steamboat or vessel called the "Three Friends," her engines, tackle, machinery, apparel, and furniture, being the property of some person or persons to the said attorneys unknown.

Second. That the said steam vessel "Three Friends" is a steamboat or steam vessel of the tonnage of eighty-nine and thirty-four one-hundredths tons net, according to her new measurements, or one hundred and thirty-seven and thirty-five one-hundredths tons net, according to her old measurements, and is now still held by the said C. R. Bisbee, collector of customs, under said seizure, within the southern district and within the collection district of St. Johns and the port of Jacksonville.

Third. That the said steamboat or steam vessel, the "Three Friends," was on, to wit, on the twenty-third day of May, A. D. 1896, furnished, fitted out, and armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace.

Fourth. That the said steamboat or steam vessel, "Three Friends," on, to wit, on the twenty-third day of May, A. D. 1896, whereof one Napoleon B. Broward was then and there master, and within the said southern district of Florida, was then and there fitted out, furnished, and armed, with intent that said vessel, the "Three

Friends," should be employed in the service of a certain people, to wit, the insurgents in the island of Cuba, otherwise called the Cuban revolutionists, to cruise and commit hostilities against the subjects, property, and people of the King of Spain, in the said island of Cuba, with whom the United States are and were then at peace.

Fifth. That the said steamboat or steam vessel "Three Friends" on, to wit, on the twenty-third day of May, A. D. 1896, and whereof one N. B. Broward was then and there master, within the navigable waters of the United States, and within the southern district of Florida and the jurisdiction of this court, was then and there, by certain persons to the attorneys of the said United States unknown, furnished, fitted out, and armed, being loaded with supplies and arms and munitions of war, and it, the said steam vessel "Three Friends," being then and there furnished, fitted out, and armed with one certain gun or guns, the exact number to the said attorneys of the United States unknown, and with munitions of war thereof, with the intent, then and there, to be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain in the island of Cuba, and with the intent to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the said island of Cuba, and who, on the said date and day last aforesaid, and being so furnished, fitted out, and armed as aforesaid, then and there aforesaid, from the navigable waters of the United States, to wit, from the St. Johns river, within the southern district of Florida, and within the jurisdiction of this court aforesaid, proceeded upon a voyage to the island of Cuba aforesaid, with the intent aforesaid, contrary to the form of the statute in such case made and provided. And that by force and virtue of the acts of Congress in such case made and provided, the said steamboat or steam vessel, her tackle, engines, machinery, apparel, and furniture became and are forfeited to the use of the said United States.

Sixth. And the said attorneys say that by reason of all and singular the premises aforesaid, and that by force of the statute in such case made and provided, the aforesaid and described steamboat or steam vessel "Three Friends," her tackle, machinery, apparel and furniture, became and are forfeited to the use of the said United States.

Lastly. That all and singular the premises aforesaid are and were true and within the admiralty and maritime jurisdiction of the United States and of this honorable court. Whereupon the said attorneys pray the usual process and monition of this honorable court in this behalf to be made, and that all persons interested in the before mentioned and described steamboat or steam vessel "Three Friends" may be cited in general and special to answer the premises and all due proceedings being had, that the said steamboat or steam vessel "Three Friends," her tackle, &c., may, for the causes

aforesaid and others appearing, be condemned by the definite sentence and decree of this honorable court as forfeited to the use of the said United States, according to the form of the statute in such case made and provided.

FRANK CLARK,
H. H. BUCKMAN,
Attorneys of the United States for the Southern District of Florida.

Whereupon the following order was made:

Ordered that attachment and monition issue as prayed, returnable at Jacksonville, Dec. 7, 1896.

Entered of course.

Nov. 12th, 1896.

E. O. LOCKE, *Clerk.*

United States District Court, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMER "THREE FRIENDS."

Whereupon attachment was issued to the marshal of said district commanding him forthwith to seize and take into his custody the American steamboat "Three Friends," her tackle, apparel, boats, and furniture, and the same safely keep to await the further order of this court.

Which attachment by him was afterwards returned duly executed and, with his return thereon endorsed, is on file in said clerk's office.

Also, monition was issued to said marshal, commanding him forthwith to cite and admonish all parties whomsoever having, or pretending to have, any right, title, claim, or interest in or to said vessel, the American steamboat "Three Friends," her tackle, apparel, boats, and furniture, to be before an admiralty session at Jacksonville, Florida, for the United States Court for the southern district of Florida, on Monday, December 7th, 1896, to show cause, if any they have, why forfeiture should not be decreed as prayed in said libel.

Which monition was by the marshal afterwards returned duly executed and, with his return thereon endorsed, is on file in said clerk's office.

(Page 21, Final Record, United States District Court, southern district of Florida.)

In the District Court of the United States, Southern District of Florida. In Admiralty.

THE UNITED STATES
vs.
THE STEAM VESSEL "THREE FRIENDS."

And now Napoleon B. Broward and Montcalm Broward, intervening for the interest of themselves, appear before the court and make claim to the said steam vessel "Three Friends," her engines, boats, tackle, boiler, machinery, anchors, chains, cables, apparel, and furniture, as the same are attached by the marshal under the process of this court, at the suit of the United States, and the said Napoleon B. Broward and Montcalm Broward aver that they were in possession of the said steam vessel at the time of the attachment thereof, and that they, Napoleon B. Broward to the extent of $\frac{58}{60}$, and Montcalm Broward to the extent of $\frac{2}{60}$, are the *bona fide* owners of said steam vessel, and that no other person is the owner thereof, and that Montcalm Broward is the master of said steam vessel.

Wherefore they pray that they may be admitted to defend accordingly.

(Signed) MONTCALM BROWARD.
(Signed) N. B. BROWARD.

Sworn to and subscribed before me this 14th day of November, A. D. 1896.

[SEAL.]

N. P. BRYAN,
Notary Public, State at Large.
J. M. BARRS,
Proctor for Libellant.

Claim filed Nov. 14, 1896. E. O. Locke, clerk, by Louis Starke, deputy clerk.

Claimant's Petition for Release of "Three Friends."

In the United States District Court for the Southern District of Florida.

THE UNITED STATES
vs.
THE STEAM VESSEL "THREE FRIENDS," of the Port of Jacksonville, HER TACKLE AND APPAREL.

In admiralty. Libel of information for forfeiture of vessel for violation of neutrality laws, etc.

To the Honorable James W. Locke, judge of the United States Court for the southern district of Florida:

The petition of Napoleon B. Broward and Montcalm Broward respectfully shows:

First. That they, the said Napoleon B. Broward to the extent of

$\frac{58}{60}$ and the said Montcalm Broward to the extent of $\frac{2}{60}$ are the sole and only owners of the vessel called the "Three Friends," of the port of Jacksonville, Florida.

Second. That said vessel lately, to wit, on the 17th day of September, 1896, at the port of Fernandina, Florida, was taken into custody by the Honorable B. L. Baltzell, collector of customs in and for the district and port of Fernandina, Florida.

Third. That on the 15th day of October, 1896, said vessel was in the custody of James McKay, United States marshal in and for the said district, under and by virtue of a process of attachment from the said district court, said writ being a process of attachment for forfeiture, for violation of law, alleged in said libel as of the 2nd day of September, 1896, issued upon a libel of information in said court by Honorable Frank Clark, United States attorney for the southern district of Florida, and which is now pending in said court.

Fourth. That on the 15th day of October, 1896, your petitioners having filed their petition for an order directing the said United States marshal to deliver to them the said steam vessel "Three Friends" upon their executing a bond to the said United States, in accordance with the statute in such case made and provided, did in pursuance of an order made by your honor make and file with the clerk of the court a good and sufficient bond, with two good and sufficient sureties, in the sum of seven thousand dollars ($7,000.00), conditioned to produce the said steam vessel "Three Friends," her engines, tackle, apparel, and furniture, etc., whenever the same may be required conformably to law, which said bond was duly procured as prescribed in and by your honor's said order.

Fifth. That upon the filing and approval of said bond the said steam vessel "Three Friends," her engines, tackle, apparel, and furniture, etc., were, under the provisions of and in compliance with your honor's said order, turned over and surrendered by the said James McKay, United States marshal, as aforesaid, to the custody and possession of your petitioners on the 15th day of October, 1896.

Sixth. That from the time of the delivery of the said steamer "Three Friends" to your petitioners down to about 7 o'clock p. m. on the 7th day of November, 1896, the said steam vessel "Three Friends" was used by your petitioners exclusively in their legitimate business of towing and wrecking upon and in the vicinity of the St. Johns bar, and the said steamer was being so used by your petitioners in the charge and command of Capt. Montcalm Broward, one of your petitioners, in her regular towing business on the St. Johns bar and the St. Johns river when she was seized as hereinafter mentioned.

Seventh. That said vessel lately, to wit, on the 7th day of November, 1896, at the port of Jacksonville, Florida, while so in the custody of your petitioners, under the said order of the court, and engaged in her regular legitimate business of towing, was taken

into custody by the Honorable C. R. Bisbee, collector of customs in and for the district and port of Jacksonville, Florida.

Eighth. That said vessel is now in the custody of the United States marshal, James McKay, in and for said district, under and by virtue of a process of attachment from the said district court in and for the southern district of Florida, said writ being a process of attachment for forfeiture, issued upon a libel of information in said court by Hons. Frank Clark and H. H. Buckman, attorneys of the United States for the southern district of Florida, charging violation of law, as of the 23rd day of May, 1896, and which is now pending in said court. That on account of said seizure you petitioners are compelled, at great expense to themselves, to charter another steamer to do the towing business of the steamer "Three Friends," but your petitioners are unable to obtain a steamer as well fitted for the towing business as is the steamer "Three Friends."

Ninth. Petitioners now come and pray you honor to order and direct the said James McKay, United States marshal as aforesaid, to deliver to them the said steam vessel "Three Friends," of the port of Jacksonville, Florida, together with all her tackle, apparel, and furniture, upon their executing a bond to the United States in accordance with the statutes in such cases made and provided.

Tenth. Petitioners now come and pray your honor to fix, on appraisement or otherwise, the amount of the proper bond to be given by the owners of the said steam vessel "Three Friends," for the proper forthcoming of the said steam vessel "Three Friends," in case the judgment or decree of said court shall pass against the said claimants, to answer the said judgment of decree.

(Signed) MONTCALM BROWARD.
(Signed) N. B. BROWARD.

J. M. BARRS,
A. W. COCKRELL & SON,
Attorneys for said Owners.

Petition filed Nov. 14, 1896.
EUGENE O. LOCKE, *Clerk.*

STATE OF FLORIDA, }
Duval County. }

Before me personally appeared Napoleon B. Broward and Montcalm Broward, to me well known, who, after being by me first duly sworn, say that they are the true and *bona fide* owners of the vessel called the "Three Friends," of the port of Jacksonville, Florida, above mentioned, and that no other person is the owner thereof.

MONTCALM BROWARD.
N. B. BROWARD.

Sworn to and subscribed before me this 14th day of November, A. D. 1896.

N. P. BRYAN,
Notary Public, State at Large.

[Endorsed:] In United States district court, southern district of

Florida. In admiralty. The United States *vs.* Steamer "Three Friends." Petition. Filed Nov. 14th, 1896. Eugene O. Locke, clerk.

In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES
vs.
STEAM VESSEL "THREE FRIENDS."

Exceptions to Libel.

Now comes N. B. Broward and Montcalm Broward, the owners of said steam vessel "Three Friends," and file the following exceptions and objections, severally, to the libel herein:

1. Sec. 5283, for an alleged violation of which the said vessel is sought to be forfeited, makes such forfeiture dependent upon the conviction of a person for doing the act or acts denounced in the first sentence of said section, and as a consequence of conviction of such person; whereas the allegations in said libel do not show what persons had been guilty of the acts therein denounced as unlawful.

2. The said libel does not show the "Three Friends" was fitted out and armed, attempted to be fitted out and armed, or procured to be fitted out and armed in violation of said section.

3. The said libel does not show the said vessel was so fitted out and armed, or so attempted to be fitted out and armed, or so procured to be fitted out and armed or furnished, with the intent that said vessel should be employed in the service of a foreign prince, or State, or of a colony, district, or people with whom the United States are at peace.

4. The said libel does not show by whom said vessel was so fitted out.

5. Said libel does not show in the service of what foreign prince, or State, or colony, or district, or body politic the said vessel was so fitted out.

6. The said libel does not show that said vessel was so armed or fitted out or furnished with the intent that such vessel should be employed in the service of any body politic recognized by or known to the United States as a body politic.

Wherefore, and for divers other grounds appearing on the face of said libel, it is prayed that said libel be dismissed.

A. W. COCKRELL & SON,
Proctors for the Owners.

[Endorsed:] In the district court of the United States, southern district of Florida. In admiralty. The United States *vs.* The Steam Vessel "Three Friends." Exceptions to libel. Filed Nov. 30th,

1896. Eugene O. Locke, clerk. A. W. Cockrell & Sons, proctors for owners "Three Friends."

District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMTUG THE "THREE FRIENDS."

This vessel being under attachment and in custody of the marshal under a libel for a violation of Sec. 5283 of R. S., the claimant moves that they may be permitted to have an appraisement had and give bonds so as to obtain possession of the vessel pending the hearing of the cause. The district attorney opposes this motion, and cites in support of his opposition the case of the "Mary N. Hogan," decided by Judge Brown, of the southern district of New York, and reported in 17th F. R. 813. It is also contended that in case a vessel is libelled for a forfeiture no bond can be accepted, and refers to Sec. 941, R. S.

The section referred to is only a limit upon the power of the marshal to stay admiralty process, and does not affect the action of the court whatever.

That the filing of a libel for forfeiture is such a declaration of a forfeiture, without even a preliminary examination or *prima facie* showing that the claimant has no right to give a bond for his property, pending a hearing, especially when the Government declares itself not ready for a hearing, is so repugnant to any idea of the right of private property and so declaratory of arbitrary confiscation that were it an open question it could not be entertained. But it has been carefully considered and determined. Justice Story, in the case of "The Alligator," 1 Gall. 145, which was libel for forfeiture, in which case it was contended that the court had no authority to deliver the property on bond in a case of this nature, says:

"I understand that in all proper cases of seizure, under whatever statute made, the invariable practice in the district court has been to take bond for the property whenever application has been made by the claimant for the purpose.

"No doubt has hitherto existed respecting the right of that court to take such bonds. . . . That practice, I understand, has been recognized and sanctioned by my predecessors in this court, and I should not now feel at liberty to disturb, upon slight grounds, a practice so well settled, whatever might be my own impressions as to its regularity. The practice has been of great public convenience, and to claimants in particular it has been peculiarly beneficial. . . . Whether there be any statute existing which authorized the delivery on bond or not is not, in my judgment, material. The cause was civil cause of admiralty and maritime jurisdiction,

and nothing can be better settled than that the admiralty may take fidejussory caution of stipulation in case *in rem*, and may in a summary manner award judgment and execution there. The district court possessing this jurisdiction and being fully authorized to adopt the process and modes of proceeding of the admiralty . . . had an undoubted right to deliver the property on bail and to enforce a conformity to the terms of the bailment."

This I consider is the well-established law upon the subject, and I have failed to find any case where it has been question.

In the case of the "Mary N. Hogan" this general law was not questioned, but it was held to be within the discretion of the court to grant or deny a release on bond according to the circumstances of the case, and while I concur fully in the views of the learned judge in that case, I consider that the circumstances of this case differ so materially that a different conclusion may well be reached. In that case the seizure was made immediately after the fitting out and while preparing to leave, and when the motion was heard she was fully prepared to proceed on her alleged illegal voyage, and all circumstances pointed clearly to the conclusion that if released she would proceed. In this case the libel charges a past offense, several months prior to the seizure, and there is nothing to show, nor is there any intimation, but that at the time of seizure she was engaged in the legitimate prosecution of her regular business of towing on the St. John's river.

The case of the "Hogan" at the time of that decision was ready for a hearing and immediate determination; in this case exceptions to the libel have been filed raising important questions of law, on which the Government is not ready for argument, and the consideration of which may cause more or less delay in the trial.

There is no suggestion, intimation or reason to believe that if released on bond this vessel would attempt any violation of law.

Under the circumstances it is considered that the case does not present such unusual features as to call for an exceptional ruling upon the question of admitting to bail, and it is ordered that upon an appraisement being had said claimants be permitted to enter in bond and stipulation as by law provided for the release of vessels under attachment.

J. W. LOCKE, *Judge.*

Filed December 3, 1897. E. O. LOCKE, *Clerk.*

In the District Court, Southern District of Florida.

In re THE STEAMER "THREE FRIENDS," &c. Violation of Sec. 5283, R. S.

The petition of claimants for appointment of appraisers and authority to give bond for said steamer, being presented, argued, and

considered, it is ordered that A. D. Stevens and W. B. Watson are appointed to appraise the value of said steamer "Three Friends," her tackle, apparel and furniture, having regard to the amount for which in their judgment said steamer, her tackle, apparel and furniture would be sold on order of this court for cash at public outcry, and report their appraisement by filing their report with the clerk of this court.

It is further ordered that upon the execution and filing of a bond comformably to the statute with the claimant as principals and with sureties, the solvency and efficiency of which shall be approved by E. O. Locke, clerk of this court, specially designated for that purpose, the said bond being in the sum fixed by said appraisers as the value of said steamer in their report and conditioned for the payment of such amount in the event that upon a final hearing the court shall decree said steamer to be forfeited, the marshal for the southern district of Florida shall turn over and surrender the custody and possession of the said steamer "Three Friends," her tackle, apparel and furniture now in his hands to the said Napoleon B. Broward and Montcalm Broward, claimants.

Done and ordered this third day of December, A. D. 1897.

JAMES W. LOCKE, *Judge.*

[Endorsed:] U. S. dist. court, so. dist. Fla. United States *vs.* Str. "Three Friends." Violation sec. 5283, R. S. Order for appraisement and bond. Filed Dec. 3rd, 1896. E. O. Locke, clerk. L. Starke, dep. clerk.

United States District Court, Southern District of Florida.

UNITED STATES
vs.
STR. "THREE FRIENDS."

A. D. Stevens and W. B. Watson having been appointed to appraise the value of said vessel, her tackle, apparel, and furniture, etc., do hereby solemnly swear that they will well and faithfully appraise the value of such property and true return make thereon to said court.

A. D. STEVENS.
W. B. WATSON.

Sworn to and subscribed before me this 3d December, 1896.

EUGENE O. LOCKE, *Clerk.*

[Endorsed:] U. S. district court, southern district of Florida. United States *vs.* S.S. "Three Friends." Oath of appraisers. Filed Dec. 3rd, 1896. Eugene O. Locke, clerk.

In the District Court, Southern District of Florida.

In re THE STEAMER "THREE FRIENDS," &c. Violation of Sec. 5283. R. S.

The undersigned, appraisers appointed by the order of this court December 3d, 1896, respectfully report that they have appraised the value of the said steamer "Three Friends," her tackle, apparel, and furniture, having regard for the amount for which, in their judgment, said steamer, her tackle, apparel, and furniture would be sold on order of this court for cash at public outcry, and hereby respectfully report that they have so appraised said steamer "Three Friends," her tackle, apparel, and furniture, at four thousand $\frac{00}{100}$ dollars, and file this as their report, this 4th day of December, 1896.

A. D. STEVENS,
W. B. WATSON,
Appraisers.

[Endorsed:] U. S. dist. ct., so. dist. Fla. United States *vs.* Str. "Three Friends." Appraisers' report. $4,000. Filed Dec. 4th, 1896. E. O. Locke, clerk.

In the United States District Court, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMER "THREE FRIENDS." } Violation of Section 5283, Revised Statutes.

Know all men by these presents that we, Napoleon B. Broward, Montcalm Broward, and the Fidelity and Deposit Company of Maryland, of Baltimore, Maryland, are held and firmly bound unto the United States in the sum of ten thousand ($10,000) dollars, lawful money of the United States, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of December, 1896.

The condition of this obligation is such that whereas a libel is now pending in the United States District Court for the southern district of Florida at the suit of the United States against the steam vessel "Three Friends," her tackle, apparel, and furniture, whereof the said N. B. Broward and Montcalm Broward are claimants, and the said claimants having prayed that the said vessel, her tackle, apparel, and furniture shall be delivered to them on the execution of a bond to the United States for the payment of the appraised value of said steamer, her tackle, apparel, and furniture, which value has been duly appraised at ten thousand dollars.

Now, if the said Napoleon B. Broward and the said Montcalm Broward shall well and truly pay to the United States the said

amount of ten thousand dollars in case the decree of said court shall pass against them to that effect, then this obligation shall be void, otherwise to remain in full force and virtue.

NAPOLEON B. BROWARD. [SEAL.]
MONTCALM BROWARD. [SEAL.]
FIDELITY & DEPOSIT CO.
OF MARYLAND, [SEAL.]
By D. U. FLETCHER, *Attorney-in-fact.*

Signed, sealed, and delivered in presence of us—
As to Browards:
J. M. BARRS.
N. P. BRYAN.

As to F. & D. Co.:
JNO. W. DODGE.
CAROLINE HARDING.

Attest: SAM'L J. SLATER, JR.,
Agent for the Company.

Approved Dec. 7th, 1896.

EUGENE O. LOCKE, *Clerk.*

[Endorsed:] No. 131 O. L., 7. United States *vs.* S. S. "Three Friends." Bond. Filed Dec. 7th, 1896. Eugene O. Locke, clerk.

United States District Court, Southern District of Florida.

On Monday, December 28th, 1896, this cause came on to be heard before said court upon exceptions to libel.

Present: Honorable James W. Locke, judge; both parties being represented by counsel.

And the exceptions herein being fully argued,—both libellant and respondent, and the same are submitted to the court, and decision is reserved.

Afterward, to wit, upon consideration thereof, parties being present, by counsel, it is decreed as follows:

District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMBOAT "THREE FRIENDS." } Libel for Forfeiture.

This cause coming on to be heard upon exceptions to the libel and having been fully heard and considered, it is ordered that said second, third, fifth, and sixth exceptions be sustained and that the libellant have permission to amend said libel, and in event said

libel is not so amended within ten days the same stand dismissed and the bond herein filed be canceled.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., January 18, 1897.

[Endorsed:] District court. United States *vs.* Str. "Three Friends." Decree sustaining exceptions to libel. Filed Jan. 18, 1897. E. O. Locke, clerk.

In the District Court of the United States for the Southern District of Florida. In Admiralty.

THE UNITED STATES *vs.* THE STEAM VESSEL "THREE FRIENDS." } Libel of Information for Forfeiture.

To A. W. Cockrell & Sons and J. M. Barrs, proctors for claimants and appellees.

SIRS: Please take notice that the libellants herein hereby appeal from the final decree made and entered herein on the eighteenth day of January, A. D. 1897, to the United States Circuit Court of Appeals for the Fifth Circuit, to be holden in and for said circuit at the city of New Orleans, Louisiana.

This twenty-third day of January, A. D. 1897.

FRANK CLARK,
United States Attorney for the Southern District of Florida,
Proctor for the Libellants.

CROMWELL GIBBONS,
Ass't U. S. Att'y and Proctor for Libellants.

Service of the above notice of appeal is hereby accepted this January 23d, 1897. A. W. COCKRELL & SON,
Proctors for Claimants and Appellees.

[Endorsed:] Dist. ct. of the U. S. for the so. dist. Fla. In admiralty. The United States *vs.* The Steam Vessel "Three Friends." Notice of appeal. Filed Jan. 23rd, 1897. E. O. Locke, clerk, by Louis Starke, dep'y clerk.

United States District Court, Southern District of Florida.

THE UNITED STATES *vs.* THE STEAM VESSEL "THREE FRIENDS." } Libel of Information for Forfeiture.

Assignment of Errors.

The libellants hereby assign errors in the ruling and proceeding of the district court herein, as follows:

First. For that the court over the objection of the libellants

allowed the said steam vessel "Three Friends" to be released from custody upon the giving of bond.

Second. For that the court erred in sustaining the 2d, 3d, 5th, and 6th exceptions of the claimants to the libel of information of the libellants.

Third. For that the court erred in entering a decree dismissing the libel of information herein.

Jacksonville, Florida, January 23d, A. D. 1897.

FRANK CLARK,
United States Attorney for the Southern District of Florida,
CROMWELL GIBBONS,
Ass't United States Attorney for the Southern District of Florida,
Proctors for Libellants.

[Endorsed:] In the district court of the U. S. for the so. dist. of Fla. In admiralty. The United States *vs.* The Steam Vessel "Three Friends." Assignment of errors. Filed Jan. 23d. E. O. Locke, clerk, by Louis Starke, dep'y clerk.

United States District Court, Southern District of Florida.

UNITED STATES *vs.* THE STEAM VESSEL "THREE FRIENDS." } Libel of Information for Forfeiture.

To the judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The petition of the United States of America respectfully shows to the court:

That on the 12th day of November, A. D. 1896, the libellants filed a libel of information in the United States District Court for the southern district of Florida against the said steam vessel "Three Friends," praying that for the reasons set forth in said libel that the said steam vessel "Three Friends," her tackle, apparel and furniture might be condemned by the definitive sentence and decree of said court as forfeited to the use of the said United States.

That upon the filing of the said libel of information an attachment and monition were issued by the clerk of said court in due form and said steam vessel "Three Friends" was taken into the custody of the court by the marshal of the southern district of Florida thereunder.

That thereafter, to wit, on the 14th day of November, A. D. 1896, one Montcalm Broward and N. B. Broward appeared in the said suit and made claim as owners of the said steam vessel "Three Friends," and at the same time filed in said court their petition praying that an appraisement of said vessel might be had and they, the said claimants, allowed to give bond for the release of said steam vessel from custody.

That thereafter, to wit, on the 30th day of November, A. D. 1896, the said claimants filed in said court their exceptions to the libel of information filed by your petitioners, praying that said libel of information might be dismissed for the causes therein set forth.

That thereafter, to wit, on the 3d day of December, A. D. 1896, the judge of said court issued an order allowing the petition of said claimants, appointing appraisers, and granting bail over and against the objection of your petitioners.

That thereafter, to wit, on the 18th day of January, in the year 1897, issue having been joined upon the exceptions of the claimants to the libel of information of your petitioners, the same came on to be heard, the Honorable James W. Locke, judge of the said court, and such proceedings were thereupon had that on the 18th day January, A. D. 1897, the judge pronounced in favor of and sustained the 2d, 3d, 5th and 6th, exceptions of the said claimants to the libel of information of your petitioners, and thereupon caused to be entered a decree dismissing petitioner's libel of information.

That your petitioners are advised and insist that the order of the honorable district court allowing bail for said vessel entered therein on the 3d day of December, A. D. 1896, is erroneous, in that bail cannot be allowed in proceedings for the absolute forfeiture of vessels.

That your petitioner is advised and insists that said decree dismissing petitioner's libel of information is erroneous, in that it sustains the 2d, 3d, 5th and 6th exceptions of the claimants to petitioner's libel of information. For this and other reasons your petitioners appeal from the said final decree to the United States Circuit Court of Appeals for the Fifth Circuit, and on said appeal intend to secure a new decision on the law upon the pleadings in said district court, and to that end pray that the records and proceedings of said court may be returned to the United States Circuit Court of Appeals for the Fifth Circuit, and that the said decree may be reversed and the libel of information be sustained with costs in the district court and in this court.

This 23d day of January, A. D. 1897, at Jacksonville, Florida.

FRANK CLARK,
United States Attorney for the Southern District of Florida, Proctor for Libellants.

CROMWELL GIBBONS,
Ass't United States Att'y for Southern District of Florida and Proctor for Libellants.

The foregoing appeal is hereby allowed.
Jacksonville, Florida, January 23d, A. D. 1897.

JAMES W. LOCKE, *Judge.*

[Endorsed:] In the district court of the United States for the so.

dist. Fla. In admiralty. The United States *vs.* The Steam Vessel "Three Friends." Petition of appeal. Filed Jan. 23rd, 1897. E. O. Locke, clerk, by Louis Starke, dep'y clerk.

Opinion.

District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMER "THREE FRIENDS." } Forfeiture.

This vessel has been libelled for forfeiture under the provisions of the Section 5283 of the Revised Statutes of the United States.

The libels allege that said steam vessel was on the 23d day of May, A. D. 1896, furnished, fitted, and armed "with intent that she should be employed by certain insurgents or persons in the island of Cuba to cruise or commit hostilities against the subjects, citizens, or property of the said island of Cuba and against the King of Spain and the subjects, citizens, and property of the said King of Spain in the island of Cuba, with whom the United States are and were at that date at peace."

To this there have been exceptions filed upon two grounds:

1st. That forfeiture under this section depends upon the conviction of a person or persons for doing the acts denounced; and

2d. That the libel does not show that the vessel was armed or fitted out with the intention that she should be employed in the service of a foreign prince or state, or of any colony, district, or people recognized or known to the United States as a body politic.

The first objection raised by these exceptions is easily disposed of by the language of the Supreme Court in the case of the "Palmyra," 12 Wheaton, 1, where, after elaborate argument, it is said:

"Many cases exist, when the forfeiture for acts done attaches solely *in rem* and there is no accompanying penalty *in personam;* many cases exist where there is both a forfeiture *in rem* and a personal penalty; but in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been, as so this court understands the law to be, that the proceeding *in rem* stands independent of and wholly unaffected by any criminal proceeding *in personam.*" . . .

"In the judgment of this court no personal conviction of the offender is necessary to enforce a forfeiture *in rem* in cases of this nature."

The other question raised by the exceptions is more difficult and requires a construction of the clause of the Section 5283, "with intent that such vessel should be employed in the service of any foreign prince or state, or of any colony, district or people," and more particularly the significance of the words "colony, district, or

people," and a determination whether the requirements of the law are satisfied by the allegations of the libel that the vessel was intended to be employed "in the service of certain insurgents or persons in the island of Cuba," and whether the statute admits a construction which would make a vessel liable to forfeiture when fitted out for the intended employment of any one or more persons not recognized as a political power by the Executive of our nation.

The section under which this libel has been filed was originally the third section of the Act of June 5, 1794, I Stat. 281, Ch. 50, and the language at that time only contained the provision that the vessel should be fitted out with intent that said vessel should be employed in the service of any foreign prince or state to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state with whom the United States might be at peace.

While that was the language of the act, the question came before the Supreme Court in the case of Gelston *vs.* Hoyt, 3d Wheaton, 328, and, in speaking of a plea considered necessary for a defense to a suit for damages for a seizure under this statute, it was held that such plea was bad, "because it does not aver the governments of Petion and Christophe are foreign States which have been duly recognized as such by the Government of the United States."

In this case there was no distinction made between the party in whose service the vessel was to be employed and the one against whom hostilities were intended, and the language of the court would fully justify the conclusion they should both have been recognized, either as princes or States.

Subsequently, as is stated by Mr. Wharton in his work on International Law, upon the outbreak of war between the South American colonies and Spain, upon a special message of the President to Congress upon the subject, the words "or of any colony, district, or people," were added to the description of both parties contemplated—both that one into whose employment the vessel was to enter and that one against whom the hostilities were contemplated.

Has the addition of these words changed the character of the party intending to employ such vessel from that of a political power duly recognized as such, as is declared by the court in Gelston *vs.* Hoyt, to that of a collection of individuals without any recognized political position? This question has been before the courts frequently, and several times been examined and commented upon, but in no case which I have been able to find has it been so presented, unconnected with questions of fact, that there has been a ruling upon it so that it can be considered as final and conclusive.

Beyond question the courts are bound by the actions of the political branch of the Government in the recognition of the political character and relations of foreign nations, and of the conditions of peace or war.

The Act of 1794, as well as its modification, that Act of 1818, used the same language in describing the power or party in whose behalf or into whose service the vessel was intended to enter as was used in describing the political power against which it is intended that hostilities should be committed; and as far as the language itself goes it is impossible to say that in using the words in one clause of the sentence the political character and power was intended, while in another clause of the same sentence words used in exactly the same connection and with apparently the same force and meaning were intended to represent not the political power but the individuals of a certain colony, district or people.

It is contended that although the original Act of 1794 required the construction given in Gelston *vs.* Hoyt, that each party should be one duly recognized by the United States, yet the modification of 1818 so changed it that it should be held to apply to any persons, regardless of their political character, for whose service a vessel might be intended.

It is understood that this modification was brought about by the special message of President Madison of December 26, 1816. The question presented by this message is clearly set forth in the language used. He says: "It is found that the existing laws have not the efficacy necessary to prevent violations of the United States as a nation at peace toward belligerent parties and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States."

In further explanation of the condition of affairs which called for this modification of this statute may be considered the letter of Mr. Monroe, Secretary of State, to Mr. Forsythe, January 10, 1817, in which he speaks of vessels going out as merchant vessels and hoisting the flag of some of the belligerents and cruised under it, of other vessels armed and equipped in our ports hoisting such flags after getting out to sea, and of vessels having taken on board citizens of the United States who, upon the arrival at neutral points, have assumed the character of officers and soldiers in the service of some of the parties in the contest then prevailing. All of this correspondence shows that the effort at that time was to enforce neutrality between recognized and belligerent parties. That the parties then in contest were recognized as belligerents and a neutrality was sought to be preserved is clearly shown by the first annual message of President Monroe in 1817. He says: "Through every stage of the conflict the United States have maintained an impartial neutrality, giving aid to neither of the parties in men, money, ships, or munitions of war."

"They have regarded the contest not in the light of an ordinary insurrection or rebellion, but as a civil war between parties nearly equal, having as to neutral powers equal rights. Our ports have been opened to both, and any articles . . . that either was permitted to take has been equally free to the other."

It is considered that this shows what was in contemplation at the time of the enactment of the law of 1818, and that what was intended was to prevent the fitting out of vessels to be employed in the service of a colony, district, or people, which had been recognized as belligerents, but which had not been recognized as an independent state, or which was not represented in the political world by a prince.

There appears to be nothing in the remedy demanded at that time, or in the language used, to show that the words so added were intended to represent or be construed as referring to the individual people of any colony, district, or people, or any number of them however designated except as in their collective representative political capacity, any more than there is to show that the term state in the original was intended to refer to the individual people of the state.

The language of the foreign enlistment act of Great Britain, 59 George III, Ch. 69, 7, leaves no question as to the intention of Parliament in that legislation, as it added to the words of our statute the words, "or part of any province or people or of any person exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or parts of any province or people."

In order to give the statute under which this libel is brought the force contended for by the libellant, it is necessary to eliminate from the provision that makes it necessary to declare how the vessel is to be employed the entire clause "in the service of any foreign prince or state, or of any colony, district, or people," or to read into it the language found in the act of Great Britain, or its equivalent. That it was the general understanding at the time of the passage of the original act that it was considered to apply only to duly recognized nations is shown by the fact that, in the case of The United States *vs.* Guinet, 2 Dall. 321, under this same section—the first case brought under it—the indictment alleged fully in terms that both the State of the Republic of France, in whose service the vessel was to be employed, and the King of Great Britain were a state and a prince with whom the United States was at peace.

In the case of the United States *vs.* Quincy, C. Pet. 445, the Supreme Court says that the word people was used in this statute as simply descriptive of the power in whose service the vessel was intended to be employed, and is one of the denominations applied by the acts of Congress to a foreign power.

In the case of the "Meteor," F. C., 9 498, where the original libel alleged that the vessel was fitted out with the intent that she should be employed in the service of certain persons to commit hostilities against the Government of Spain, it was considered necessary to amend it by alleging that she was intended to be employed by the Government of Chili; and in that case there was presented a certificate of the Secretary of State, under seal, of the fact of the war

existing between Spain and Chili, and that they were both nations with whom the United States were at peace.

In addition to the declaration of the Supreme Court in the cases of Gelston *vs.* Hoyt, and the United States *vs.* Quincy, this question has been incidentally under examination in several cases in the lower courts. In the case of the Carondelet, 37 F. R. 800, Judge Brown says: "Section 5283 is designed in general to secure our neutrality between foreign belligerent powers. But there can be no obligation of neutrality except towards some recognized State or power, *de jure* or *de facto*. Neutrality presupposes two belligerents, at least, and as respects any recognition of belligerency—*i. e.*, of belligerent rights—the judiciary must follow the executive. To fall within the statute, the vessel must be intended to be employed in the service of one foreign prince, state, colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of another with which the United States are at peace. The United States can hardly be said to be at peace, in the sense of the statute, with a faction which they are unwilling to recognize as a government; nor could the cruising or committing of hostilities against such a mere faction well be said to be committing hostilities against the subjects, citizens, or property of a district or people within the meaning of the statute. So, on the other hand, a vessel in entering the services of the opposite faction of Hippolyte, could hardly be said to enter the service of a foreign prince or state, or of a colony, district, or people, unless our Government had recognized Hippolyte's faction as at least constituting a belligerent, which it does not appear to have done."

In the case of the "Conserva," 38 F. R. 481, a case in which it was alleged the vessel was to be used in a contest between Legitime and Hippolyte, Judge Benedict says: "The libel in this case charges certain facts to have been done in connection with the vessel with the intention that the vessel be employed in the service of certain rebels in a state of insurrection against the organized and recognized government of Hayti to cruise and commit hostilities against the subjects, citizens, or property of the Republic of Hayti, with whom the United States are at peace. A violation of the neutrality which the United States is obliged to maintain between the rebels mentioned and the Government of the Republic of Hayti is the gravamen of the charge. But the evidence fails to show a state of facts from which the court concluded that the United States was ever under any obligation of neutrality to the rebels mentioned, or is now under any obligation of neutrality to the Government of the Republic of Hayti."

In the case of the United States *vs.* Trumbull, 48 F. R. 99, Judge Ross, 48 F. R. 99, carefully reviews the different authorities, examines the question, and clearly indicates how he would have decided the question had it been necessary for the purpose of

deciding the case before. He says: "Does Section 5283 of the Revised Statutes apply to any people whom it is optional with the United States to treat as pirates? That section is found in the chapter headed 'Neutrality,' and it was carried into the Revised Statutes, and was originally enacted in furtherance of the obligations of the nation as a neutral. The very idea of neutrality imports that the neutral will treat each contending party alike; and it will accord no right or privilege to one that it withholds from the other, and will withhold none from one that it accords to the other."

In speaking of the case of The United States *vs.* Quincy, in which it was said that the word "people" "was one of the denominations applied by the act of Congress to a foreign power," he says: "This can hardly mean an association of people in no way recognized by the United States or by the Government against which they are rebelling, whose rebellion has not attained the dignity of war, and who may, at the option of the United States, be treated by them as pirates."

In the case of The United States *vs.* The "Itata," 56 F. R. 505, on appeal before the circuit court of appeals, the question was fully and carefully considered in an elaborate opinion, and although not found necessary to decide the question in this case, as the case was disposed of upon other grounds, it is considered to be apparent how the question would have been decided had it been necessary. The force of the word "people," as used in this statute, is carefully examined, as well as all other questions, and it is considered that the force of the conclusion which must necessarily result from such investigations cannot be avoided.

In the case of The United States *vs.* Hart *et al.*, Judge Brown expresses his views of this section by saying: "Section 5283 deals with armed cruisers, designed to commit hostilities in favor of one foreign power as against another foreign power with whom we are at peace."

The same language is used by the court in the case of The United States *vs.* Wiborg, 163 U. S. 632, but it is contended in behalf of the libellant that this language was modified by the subsequent declaration made in the same case, that the operation of this statute is not necessarily dependent on the existence of such state of belligerency. In using the latter language it would seem that the court had the entire statute under contemplation, and more particularly Sec. 5286, R. S., the sixth section of the original act, which plainly does not depend upon a state of belligerency or neutrality. This was the section then under consideration, as the immediate context and following sentence shows, and was the section upon which the suit was based; and it cannot be considered that this language was intended to apply to another section, the consideration of which was in no way called in question.

With this understanding of the language in this case, in that case, every judicial decision, remark, or ruling, where the question has been under consideration or examination, appears to be in favor of the position taken by the claimants in the exceptions.

In the case of the "Mary N. Hogan," 18 F. R. 529, and in the cases of the intended charge of that vessel, boxes of arms, and ammunition (20 F. R. 50), it does not appear that this question was raised by the claimant or considered by the learned judge; and his language in the subsequent case of the "Carondelet," where it was raised and discussed, may be accepted as presumptive proof of what his decision would have been, had it been so considered.

The same is true of the case of the "City of Mexico," 28 F. R. 148, decided by me in this court. In that case the defense was upon entirely different grounds, and the force of the portion of the statute contended for, the necessity that there should be an intent not only that the vessel should intend to commit hostilities, but that for such purposes she should be employed in the service of some political power, was entirely lost sight of and eliminated from the consideration of the case.

The only expression authoritatively given which I have been able to find opposed to the view of the claimant in his exceptions is that of a portion of the letter of the honorable Attorney General to the Secretary of State, of December 16, 1869, 13 Op. Att'y Gen. 177, and cited in the case of United States *vs.* Wiborg. I do not consider that I should be doing myself justice to pass that by unnoticed, as it has raised more question in my mind and called for and compelled more thought and consideration than anything else connected with the case; but I feel compelled to reach a different conclusion than is there expressed.

The general purpose and intent of that letter was to declare that the insurrection in Cuba was not a fitting opportunity to enforce the provisions of this law, inasmuch as we owed no duty to such insurgents to protect them from hostilities, or rather that any contest between Spain and such insurgents could not be considered as hostilities, but incidentally it was stated that a condition of belligerency was not necesary for the operation of this statute.

It could not be considered that we owed such insurgents no such duty because we were not at peace with them, but because we had never recognized them as a colony, district, or people.

The force and effect of the letter was that the Cuban insurgents had not been recognized as a colony, district, or people, and therefore this section did not apply. If they had not been then so recognized or were not entitled to be so recognized, how can they now be so recognized or described as to come within terms of the statute in question?

It is considered that the argument used in such letter to show that the statute should be held applicable to cases where there was

no condition of belligerency and but one political power recognized, would have been fully as applicable under the old law, when the case of Gelston *vs.* Hoyt decided to the contrary.

The fact that a vessel was fitted out to be employed in the service of a prince would not necessarily imply that such a prince was a political power recognized by the United States any more than would the terms a "colony, district or people," under the Act of 1818. But the Supreme Court clearly held in that case that it must be alleged that such prince or state has been recognized as such by the United States. The same argument used therein would call for the application of this statute for the forfeiting of any vessel fitted out to be employed by any person, individual, corporation, or firm, for the purpose of committing hostilities against a state at peace, which would plainly not come within the provisions of the statute, however much it might be considered international policy or proper national conduct.

It is impossible in my view of the construction required by the language used to properly apply the term a people, used in the connection in which it is found, to any persons few in number and occupying a small territory with no recognized political organization, although they might procure the fitting out and arming of a vessel. I fail to find any ground for giving this statute, a criminal one as it is, any but its ordinary application. The question presented is clear and distinct, are "certain insurgents or persons in the island of Cuba" properly described by either of the terms a "colony," a district, or a people, and if so, which? The inconveniences which might arise from the political branch of our Government recognizing such insurgents as a colony, district, or people having political existence and as belligerents cannot be considered in determining whether they are entitled to such description.

This statute is a criminal and penal one, and is not to be enlarged beyond what the language clearly expresses as being intended. It is not the privilege of courts to construe such statutes according to the emergency of the occasion, or according to temporary questions of policy, but according to the principles considered to have been established by a line of judicial decisions.

It is contended that if the principles embodied in the exceptions are declared to be the law, there can be no law for the prevention of the fitting out of armed and hostile vessels to stir up insurrections and commit hostilities against nations with which we are at peace, and that such conclusion would make the parties engaged in any such expedition liable to prosecution as pirates.

To the first of these points it is considered that Section 5286 is, as has been constantly held, intended to prevent any such expeditions, regardless of the character of the parties in whose behalf they were organized, the only distinction being that in that case it is necessary to bring a criminal suit and prove overt acts, while under this portion of this section the intent is the gravamen of the charge

and the prosecution is against the vessel, regardless of the persons engaged in the fitting out or the ignorance or innocence of the owners.

This is not a case that can be or should be determined upon questions of public policy, and whether any parties subject themselves to prosecution for piracy or not should have no weight in its consideration. If they should be so subject they would have the benefit of the necessity of proving piratical acts rather than intentions.

It is certainly considered to be true that any such parties would be considered as pirates by Spain, and would be treated as such if found in any acts of hostility, regardless of any recognition this nation might give them by considering them as having any political character as a people.

Without attempting further argument, but regretting that the pressing duties of a very busy term of jury trials have prevented a fuller and more complete expression of my views, it is my conclusion that the line of judicial decisions demands that a construction should be put upon the section in question which would hold that it was the intention of Congress in such enactment to prevent recognized political powers from having vessels prepared for their service in the United States, but that it was not the intention to extend such prohibition to vessels fitted out to be employed by individuals or private parties, however they might be designated, for piratical or other hostilities where no protection could be obtained by a commission from a recognized government, In such case they would be held liable under the section which provides for the fitting out of a military expedition, or if they were guilty of any piratical acts upon the high seas they would become liable under the laws for the punishment of such acts. It is considered that at the time of the amendment of 1818 this construction had been declared, and the language of the amendment was in no way intended to change such construction, but was only intended to apply to the new designation of political powers the existence of which had been recognized as belligerents if not as independents, and who were entitled to the rights of neutrals; that the libel herein does not state such a case as is contemplated by the statute, in that it does not allege that said vessel had been fitted out with intent that she be employed in the service of any foreign prince or state, or of any colony, district, or people recognized as such by the political power of the United States, and unless it can be so amended should be dismissed, and it is so ordered.

. . . . . .

Since writing the foregoing, the libel herein has been amended by inserting in place of "by certain insurgents or persons in the island of Cuba," the words "in the service of a certain people, to wit, certain people then engaged in armed resistance to the Government of the King of Spain in the island of Cuba," but it is consid-

ered that the objection to the libel in sustaining the exceptions has not been overcome, but that although the language has been somewhat changed, the substance has not been amended in the material part, inasmuch as it appears clearly that the word people is used in an individual and personal sense, and not as an organized and recognized political power in any way corresponding to a state, prince, colony, or district, and can in no way change my conclusion heretofore expressed, and the libel must be dismissed.

By LOCKE,
District Judge.

United States District Court, Southern District of Florida. In Admiralty.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document of 43 pages is a true copy of the record in the case of—

THE UNITED STATES
vs.
THE S. S. "THREE FRIENDS." } Forfeiture No. 281.

lately adjudicated in said court, as appears from the records and files in my office.

In testimony whereof I hereunto set my hand and the seal of said court, at Jacksonville, in said district, this January the twenty-sixth, A. D. 1897.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

[Endorsed on cover:] U. S. district court, southern district of Florida. No. 281. United States *vs.* S. S. "Three Friends," etc. Apostles.

United States Circuit Court of Appeals, Fifth Circuit.

I, James M. McKee, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages, numbered from 3 to 24, inclusive, contain a true, full, and perfect transcript of the record filed in the office of the clerk of said court and docketed in said court, in the case of The United States, appellant, *vs.* The Steam Vessel "Three Friends," Napoleon B. Broward and Montcalm Broward, claimants, appellees, No. 561, as the same remains upon the files and records of said United States Circuit Court of Appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the city of New Orleans, this fifth day of February, A. D. 1897.

JAMES M. McKEE,
Clerk of the United States Circuit Court of Appeals, for the Fifth Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which the United States is appellant and the steamer "Three Friends," her engines, &c., Napoleon B. Broward and Montcalm Broward, claimants, are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the southern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of February, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 701. October term, 1896. The United States *vs.* The Steamer "Three Friends," &c. Writ of *certiorari.* Filed Feb'y 5, 1897. J. M. McKee, clerk.

In the United States Circuit Court of Appeals for the Fifth Circuit.

The within writ received and filed this 5th day of February, 1897, and, by direction of the judges of the honorable the United States Circuit Court of Appeals for the Fifth Circuit, I herewith return with this writ a true, full and perfect transcript of the record of the cause named in the within writ.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals, at the city of New Orleans, State—Louisiana, this 5th day of February, A. D. 1897.

JAMES M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] Case No. 16,480. Supreme Court U. S., October

term, 1896. Term No. 701. The United States, petitioner, *vs.* The Steamer "Three Friends," &c. Writ of *certiorari* and return. Filed Feb. 8, 1896.

In the Supreme Court of the United States. October Term, 1896.

THE UNITED STATES, Appellant,
vs.
THE STEAMSHIP "THREE FRIENDS," HER BOATS, TACKLE, ENGINES, ETC. } No. 701.

On writ of Certiorari to the Circuit Court of Appeals for the First Circuit.

BRIEF FOR APPELLANT.

The steamship "Three Friends" was seized on November 7, 1896, by the collector of customs for the district of St. Johns, Fla., as forfeited to the United States for breach of the provisions of Section 5283 of the Revised Statutes, which is as follows: "Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than $10,000, and imprisoned not more than three years. And every such vessel, her tackle, apparel and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

The vessel was then libeled by the United States attorney in the District Court for the Southern District of Florida, but was released upon stipulation, against his protest and opposition; and thereafter exceptions to the libel were sustained. A final decree was entered January 18, 1897, as follows (p. 12): "This cause coming on to be heard upon exceptions to the libel, and having been fully heard and considered, it is ordered that said second, third, fifth, and sixth exceptions be sustained and that the libellant have permission to amend said libel, and in event said libel is not so amended within ten days the same stand dismissed and the bond herein filed be canceled.

The United States attorney elected not to amend further (he

would appear from the opinion to have already once amended prior to the decree), and appealed on January 23, 1897, to the circuit court of appeals (p. 12). Thereafter, on February 1, this court issued its writ of *certiorari*.

This case brings up a question which has been recently much discussed, namely: Whether the words "colony, district, or people," in the section above quoted, include insurrectionary bodies like the present "Republic of Cuba," whose belligerency, technically speaking, has not yet been recognized by the executive department of our Government.

That such bodies are so included was held by Attorney General Hoar in an opinion upon the former Cuban insurrection (13 Op. 177), and up to a recent date this construction has been acquiesced in. The "Mary N. Hogan," 18 Fed. Rep. 529; United States *vs.* 214 Boxes of Arms, 20 *Id.* 50; The "City of Mexico," 28 *Id.* 148.

This opinion was referred to with approval by this court in the recent case of Wiborg *vs.* United States, 163 U. S. 632, 647. The first decision to the contrary is the one which is now brought here for review; but it is in line with a series of *dicta* commencing with that of Judge Brown in "The Carondelet," 37 Fed. Rep. 799.

Judge Brown's opinion was consistent with his prior opinion in "The Ambrose Light," 25 Fed. Rep. 403, in which he held on the hand that cruisers of unrecognized insurgents were pirates, and on the other that very slight executive recognition is sufficient to give them the full standing of belligerents. Upon both points he was answered by Dr. Wharton in the Albany Law Journal. (See Appendix J.) We believe that if the later opinion of Judge Brown is correct, the earlier is correct also—that hostilities up are necessarily piratical where they are not within Section 5283.

In speaking in this brief of recognition by the executive department of the Government we do not mean to express an opinion upon the question now being mooted, whether or how far such recognition may be made by legislative action also (discussed in Sen. Doc. No. 56, 54th Congr., 2d Session).

Statement of the case.

The libel.—The first two paragraphs allege the seizure and detention of the vessel. The third paragraph alleges that the vessel was, on May 23, 1896, "furnished, fitted out, and armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace."

The fourth paragraph is substantially similar, except that it defines the "certain people" as "the insurgents in the island of Cuba, otherwise called the Cuban revolutionists."

The fifth paragraph repeats the allegations of the third, with greater fullness of detail. The sixth and last paragraphs set forth the legal conclusions that the vessel, her tackle, etc., are forfeited to the use of the United States, and that the litigation is within the jurisdiction of the District Court for the Southern District of Florida.

The Cuban Revolutionists.—The allegations of the fourth paragraph identify the "certain people" referred to in the libel, so that their full description may be had from documents of which courts take judicial notice, namely, messages and proclamations of the President of the United States. Two proclamations referring to these "revolutionists" are printed as Appendices K and L, and extracts from the last two annual messages of the President are to be found as Appendices M and N. It will thus appear that the "revolutionists" have received what is sometimes called a recognition of insurgency, but have not received what is technically known as a recognition of belligerency.

Exceptions.—The first and fourth exceptions were overruled by the court. The second, third, fifth, and sixth exceptions raise in different forms the point that the vessel was not alleged to have been employed, within the meaning of Section 5283, in the service of a foreign prince, state, colony, district or people "with whom the United States are at peace," or "any body politic recognized by or known to the United States as a body politic."

Stipulations for the Release of Vessel.—An application was made by the claimants, Napoleon B. Broward and Montcalm Broward, for an appraisement of the vessel, with a view to her release upon stipulation. This application was resisted by the district attorney on the ground that there was no authority to release. It was granted by the court, whose opinion upon this point is to be found at pp. 8, 9. The vessel was appraised at $4,000, and a bond or stipulation given for $10,000, upon which she was directed to be released (pp. 9, 10).

Specification of Errors.

The following errors are assigned: First. For that the court over the objection of the libellants allowed the said steam vessel "Three Friends" to be released from custody upon the giving of bond.

Second. For that the court erred in sustaining the second, third, fifth, and sixth exceptions of the claimants to the libel of information of the libellants.

Third. For that the court erred in entering a decree dismissing the libel of information herein.

Argument.

Judge Locke dismissed the libel on the ground that in his opinion our statute require a "recognition of belligerency" of the insurrectionists before they can be regarded as a "colony, district, or people" within the statutory meaning.

We shall argue, first, that the internal evidence of the statute does not support Judge Locke's position, but is opposed to it; second, that the history of the statutes does not support his position, but is opposed to it; third, that if any "recognition" by the Executive of the United States is necessary to set the statute in motion sufficient recognition has already been given. If these points are well taken, it follows that the decree should be reversed. And we shall argue, fourth, that this court, in its judgment of reversal, should direct that the boat be restored to the custody of the officers, her release upon stipulation having been unauthorized.

The libel is based on the word "people," and this is believed to be the correct position.

If, however, the word "colony" or "district" is the more accurate definition of the Cuban insurrectionary body, the libel is still sufficient, for it describes the insurrection sufficiently to enable the court to perceive what is meant through its judicial knowledge, derived from the President's proclamations and messages. The variance would be merely in the statement of a legal conclusion, and the liberal rules of admiralty pleading would sustain the libel. "The Palmyra," 12 Wheat. 1, 12, 13; "The Gazelle," 128 U. S. 474, 487; see "The Caroline," 7 Cranch, 496, 500; "The Edward," 1 Wheat. 261; "The Emily" and "Caroline," 9 Wheat. 381, 386; "The Watchful," 6 Wall. 91; Benedict's Admiralty, Sec. 483.

1. The internal evidence of the statute is opposed to the theory that a recognition of belligerency is essential to its operation.

What is a recognition of belligerency?

This is a matter which does not always seem to be understood clearly. It is supposed by some that the existence of hostilities in a foreign country cannot be made publicly known by the Executive of the United States without recognizing all rights of belligerency in the parties to such hostilities; and that a recognition of belligerency does not to any extent recognize the belligerent parties as princes or states, if they were not such prior to the recognition, but constitutes them colonies, districts, or peoples, although they were not such before.

On the contrary the following propositions seem to be clearly established:

(1) That a recognition of belligerency is not always accomplished by a recognition of the fact that actual hostilities are in progress.

(2) That the existence of a civil war, in the ordinary sense of that term, may be made known by what is sometimes called a recognition of insurgency.

(3) That to justify a recognition of belligerency there must be something more than the mere existence of a civil war—the nation which gives the recognition must be impelled to do so for the protection of its own rights or those of its citizens.

(4) That the recognition of an insurgent body as a belligerent,

in the technical sense of the phrase, makes that insurgent body a state for all purposes of war.

The latest authoritative work on international law is that of Professor Lawrence, published in 1895, and quoted by the court in the Wiborg Case. Upon the effect of a "recognition of belligerency," this writer says (Lawrence, Principles of International Law, Sec. 162): "It does not confer upon the community recognized all the rights of an independent state, but it grants to its government and subjects the rights and imposes upon them the obligations of an independent State in all matters relating to the war."

The same writer discusses the proper prerequisites to such a recognition as follows (Sec. 163): "Two conditions are necessary. The struggle must have attained the dimensions of a war as wars are understood by civilized states, and the interests of the power which recognizes must be affected by it. . . . The second condition is satisfied when there are so many points of contact between the subjects of the recognizing state and the warlike operations that it is necessary for it to determine how it will treat the parties to the struggle. When an insurrection is confined to a district in the interior of a country, other states would be acting in an unfriendly manner if they recognized the belligerency of the insurgents, because by the nature of the case the incidents of the conflict could not directly affect their subjects. But if a frontier province rebelled, it would be difficult for the neighboring power or powers not to determine whether or no the rebellion amounted to a war, and should the struggle be maritime, states interested in sea-borne commerce could hardly refrain from recognition if the area of hostilities was wide and the interests at stake great and various."

A familiar and clear, although less terse, statement of these propositions, with references to authorities, is to be found in Dana's Wheaton on International Law, Section 23, note, quoted in part in Snow's Cases on International Law, p. 24.

Mr. Hall says that a recognition of belligerency has the effect "to give the belligerent community rights and duties identical with those attaching to a state for the purposes of its warlike operations as between it and the country recognizing its belligerent character" (Hall's International Law 4th ed., p. 32), and he takes the view above stated of the circumstances under which belligerency may properly be recognized (pp. 35–7).

Dr. Wharton, in his International Law Digest, collects a number of precedents (1 Wharton Int. Law Dig., 2d ed., pp. 500–520). While they show that the existence of belligerency is primarily a question of fact, they show also that its recognition by a nation not involved in the contest depends largely upon questions of policy. For instance, Secretary Fish held that it might be determined by "the nearness of the seat of hostilities to the neutral" (p. 514); and President Woolsey says that "provinces in revolt are not en-

titled by the law of nations to rights as equal parties to a civil war. They have properly no rights, and the concession of belligerency is not made on their account, but on account of considerations of policy on the part of the state itself which declares them such, or on the grounds of humanity" pp. 515–16).

From a study of international law it thus becomes clear that in a statute passed for the purposes of maintaining neutrality the word "state" sufficiently covers the case of a belligerent, whether or not its independence has been recognized. Insurrectionists endeavoring to separate themselves from the mother country become a state for the purposes of the war when their belligerency is recognized. When their independence is recognized they become a state for all purposes.

It is further apparent that there may be a recognition of the fact of actual warfare without a recognition of belligerency in the technical sense. This is a corollary to the proposition that in order to justify a recognition of belligerency the fact that actual warfare is in progress is not of itself sufficient.

The consequences of a recognition of the belligerency of an insurgent body—while it neither increases nor diminishes the duty of noninterference—are very serious. The neutral nation must abandon further claims for reparation on account of damages suffered by its citizens through the hostilities. Its merchantmen must submit to the rights of blockade, visitation, search, and seizure of contraband articles on the high seas.

Hence a recognition of belligerency should never be given except when it becomes necessary on the grounds above stated, or in the rare instances when armed intervention is justifiable.

Such a recognition can often be forced by either party to the warfare by establishing an effective blockade.

It is forced by an insurgent body when it enters into maratime operations and maintains the right to search neutral vessels for contraband of war. The neutral is thus forced either to recognize the vessels of the insurgents as belligerents or to pursue them as pirates, for if they molest third parties they must be one or the other, whatever the true definition of piracy may be. See "The Malek Adhel," 2 How. 210; "The Ambrose Light," 25 Fed. Rep. 408, and authorities cited; Dr. Wharton's criticism thereon in 33 Alb. L. J., 125, and authorities cited; Lawrence, International Law, Section 122; Dana's Wheaton, Section 124, note; 1 Op. 249, 252.

When insurgents have no maritime force, and the war is not in contiguous territory, a recognition of belligerency harms them as well as the neutral; for it gives to their enemy rights of search on the high seas which they themselves are unable to utilize. Thus if we should be forced to recognize the present hostilities in Cuba as a civil war, technically speaking, the shipment of arms, ammunition and other contraband goods to the insurgents would become much more difficult.

Hence recognitions of belligerency by a neutral nation are comparatively rare. Recognitions of the fact that hostilities are in progress are, however, quite common. Those which have been given to the present Cuban insurrection by President Cleveland (Appendices K, L, M, and N) are but the most recent and famous instances. To such recognitions Dr. Wharton has applied the convenient phrase "recognition of insurgency." (3 Whart. Int. Law Dig., 2d ed., 351; Criticism of Ambrose Light Case, 33 Alb. L. J., 125; see Appendix J.)

In discussing the present so-called neutrality law (Rev. St., Title LXVII), it is to be remembered that it is based on the former codification of April 20, 1818, Chapter 88, which in turn was derived from the so-called Neutrality Act of June 5, 1794, Chapter 50, as supplemented by the Act of March 3, 1817, Chapter 58. The Act of 1794 in its various provisions contained only the words "prince or state." The Act of 1817, wherever those words were used, added the words "colony, district, or people" (with one apparently accidental exception). The Act of 1818 inserted the latter words at every place where the words "prince or state" were found in either of the prior acts.

It is apparent upon examination of the Revised Statutes, whether considered by themselves or in comparison with the Act of 1794, 1817 and 1818, that they show rather an intent to include than an intent to exclude insurrections in their earlier stages.

(1) The heading "Neutrality."—This heading is inserted merely for convenience, and is not to be found in the Act of 1794 or that of 1818. That it does not limit the operation of the act is settled by Wiborg *vs.* United States, 163 U. S. 632, 647.

(2) The existence of a recognized state of belligerency is not an express requirement of the statute.—Section 5283 does not even use the word "war." In this respect it differs from Section 5281. If it was intended to make the operation of the statute dependent upon the existence of a state of recognized belligerency in the technical sense of the term, the absence of apt words to that end cannot be accounted for.

If Section 5283 were intended to apply only to hostilities officially recognized, it would not contain the words "the subjects, citizens or property of." War is waged against a state, not against its subjects, citizens or property.

(3) There could be no object in discriminating between recognized and unrecognized belligerents.—The duty of the United States not to interfere between the contending parties in a foreign civil war is not altered in any respect by a recognition of belligerency. The evils to be feared if we fail to perform this duty—pecuniary demands, reprisals, or even actual war—are the same after as before such recognition. Recognition of belligerency involves other perils to our citizens—liability to be stopped and searched on the high seas, and abandonment of claims for injuries to property in the insurrectionary region. Why should Congress be held to

have intended to deprive the Government of full power to avert one danger until forced to encounter the other also?

(4) Had acknowledged belligerency been the test intended the wording of the Act of 1794 would have been sufficient.—It has already been pointed out that an insurrectionary body, when its belligerency is recognized, becomes a state for all purposes of the pending war; and therefore it would naturally follow that the words "prince or state" in the original statute would become applicable to the case. This was the contemporary opinion of the Supreme Court (the "Estrella" and the "Gran Para," *infra*). That these words were deemed insufficient is presumptive evidence that the statute was intended to apply to parties whose belligerency had not been recognized; and in our next point we shall show that the presumption is confirmed by historical investigation.

(5) The words "colony," "district" and "people" are not apt if parties recognized as belligerent are the only ones intended to be referred to.—A belligerent is not recognized as a colony, as a district or as a people, but as a prince or as a state. Let us consider the words separately.

(*a*) Colony.—An insurgent colony is or is not recognized as a belligerent, when a condition of undoubted war exists, according as the hostile operations do or do not come into actual contact with citizens of the United States pursuing their ordinary avocations. Thus the belligerency of the revolted colony of La Plata or Buenos Ayres was recognized during the South American revolution because it was a maratime community whose vessels scoured the seas and even frequented our ports. The belligerency of the revolted colony of Paraguay was never recognized during the continuance of the contest, because that colony was not maratime and we never came in contact with its forces. A recognition of belligerency of that colony would have been unnecessary for our own protection, and would, therefore, have been an affront to Spain. Yet can there be any doubt that enlistment of Paraguayan troops upon our soil would have been as gross a breach of our national obligations as an enlistment of troops for the service of Buenos Ayres? Or that enlistment of troops for Buenos Ayres would have been as objectionable before as after recognition? The word "colony" described Paraguay as well as Buenos Ayres. It described Buenos Ayres before recognition as completely as it did after that occurrence.

(*b*) District.—The word "district" is peculiarly inapt if the intent is to describe a body whose belligerency has been recognized.

International law does not authorize the recognition of an insurrectionary body as a belligerent until it has become clothed with all of the attributes of a *de facto* sovereignty. With reference to such a body the word "district" would not naturally be used. Its

more natural use would be in reference to the inchoate stage of disturbance before the insurrection has taken apparent permanent shape. Whether before or after the recognition of belligerency of the insurrectionists, the word "district" would ordinarily be used to describe the territory actually occupied by them rather than their *de facto* government, whose name would represent, not the territory actually held, but the territory covered by its claims of sovereignty. Thus, if the Cuban insurrectionists should be recognized it would be, under their own appellation, as "Cuba;" but we would still speak of the insurrectionary district, meaning the territory which they actually occupy. The recognition of the Confederacy referred to the territory bounded by the lines of the seceding States, but when we spoke of the insurrectionary district we generally referred to a boundary of Confederate bayonets.

(*c*) People.—It is true that "a people" is a phrase often used as equivalent to a state. This can not be its use in the present statute, because it was introduced as an amendment to a law which already contained the word "state." The new word is not to be interpreted as mere surplusage, but is to be given some separate force if possible. Market Co. *vs.* Hoffman, 101 U. S. 112, 115–16; Opinion of Justices, 22 Pick. 571, 573. This principle was applied to the British Foreign Enlistment Act in Attorney General *vs.* Sillem, 2 Hurlst. & Coltm. 431, 572, quoting Lord Coke in 8 Rep. 117. Assuming, then, that the word is not used as the equivalent of a state or a nation, it must be used in the alternative sense of a body of men less than a nation who are bound together by ties of blood, neighborship, common enterprise, or otherwise. To this use of the word it is not necessary that there should be a recognition of belligerency or even actual hostilities pending. We spoke of the Cuban people before the revolt. We speak of the Irish people now. The Russian Jews are a people, although scattered all over an empire. If the inhabitants of any cosmopolitan city should unite in revolt they would properly be called a people, however diverse in race and tongue. Any body of individuals claiming the right to be independent, and struggling to achieve their independence, is commonly called a people from the moment when the struggle becomes important enough to attract the attention of the world; and they will not be called by this name any sooner because, by reason of their access to the sea or their contiguity to some other nation, their belligerency may receive foreign recognition at an earlier stage of the insurrection.

(5) The words "with whom the United States are at peace" are not material to this question.—The United States are at peace with all mankind except those with whom they are at war. When the United States are at war with any foreign prince, state, colony, district, or people, there is no reason for prohibiting hostile cruisers, whether in our own service or in that of communities which are

likewise hostile. If the United States should declare war against Spain we would remain at peace with the Cuban insurrectionists. We cannot now cruise against either party to the hostilities in Cuba. We could then cruise against Spain, but not against the insurrectionists. The statutory requirements as to peace has no other meaning than this.

(6) The authorities.—Recent cases in the lower courts up to the present have all turned upon other points. Their *dicta* are catalogued by Judge Locke in his opinion. Those in United States *vs.* Quincy, 6 Pet. 445, had no relation to the question now under consideration. Chief Justice Marshall and his contemporaries, as will be shown, considered that belligerent states, whether independent or not, fell within the word "state" in the older statute, and that the statute in its present form includes more. There is, however, no decision precisely in point.

(7) Conclusion.—There being nothing in the statute to indicate that the intention was to make belligerency a test or condition, we cannot import it arbitrarily by way of narrowing a penal statute. The Neutrality Act is a remedial law, to be construed reasonably. Wiborg *vs.* United States, 163 U. S. 632, 650.

An investigation, however, into the history of the statutes of 1817 and 1818, and into their contemporary construction, makes it very clear that a recognition of belligerency was not intended or supposed by the legislators to be a prerequisite to the operation of those laws.

2. The history of the statute is opposed to the idea that a recognition of belligerency is essential to its operation.

The theory of Judge Locke is that the words "colony, district, or people" were inserted in 1818 with reference to certain Spanish-American colonies whose belligerency had been recognized, and in order to avoid the effect of Gelston *vs.* Hoyt, which he supposes to have involved the proceedings of recognized belligerents.

These words were, in fact, inserted in 1817, when the belligerency of no Spanish-American colony had received formal recognition. They had reference also to insurgent districts or peoples whose belligerency was never at any time recognized, formally or informally. Gelston *vs.* Hoyt did not involve the proceedings of recognized belligerents.

The so-called neutrality acts of 1817 and 1818 and the so-called piracy act of 1819 are annexed to this brief as Appendices A, B, and C, respectively. The latter was evidently intended to supplement the prior legislation, so that remedies should be afforded against all the different forms of private military and naval enterprise to which the disturbances of that period gave rise. Whatever naval hostilities were not piratical in character were evidently regarded as within the prior act.

We shall set forth, first, the situation at the time of the Act of

1817; second, the law as then settled; third, the history of that act; fourth, the subsequent legislation of that period; fifth, the contemporary construction; and sixth, the subsequent legislation throwing light upon the subject.

(1). The situation at the time of the Act of 1817.—The Latin-American world was nearly all at war, but the contesting bodies were divided into various classes, as follows:

(*a*) The leading Spanish-American colonies, whose position as belligerents was in doubt.—Whether or not the belligerency of the South American revolutionists had been recognized in Madison's Administration depends upon the question, how much formality is necessary in a recognition of belligerency? Is it only recognized by the President or Secretary of State in a formal document declaring the fact to the world or communicating it to Congress? Or is it recognized also whenever the President or one of the Cabinet officers, in an ordinary official letter of instruction, or in transmitting information to a Congressional committee, uses the term "belligerent" or "civil war?" This cannot be. Were it so, then on the same principle President Monroe would have been held to acknowledge the independence of the South American governments as early as January, 1819 (4 Wheat., App'x, p. 41).

The former method was held necessary by Judge Benedict in one of the opinions relied upon by appellees (The "Conserva," 38 Fed. Rep. 431, 437): "It is true that various documents issued from the Department of State have been put in evidence, containing certain expressions which the court is invited to examine in order to find therein an implied recognition of the faction of Legitime as representing the Government of Hayti. I do not think that in a case like this the court is required to deal with uncertain implications contained in such documents as have been here presented. The fact of public recognition of any prince, state, colony, district, or people as a belligerent is one to be made known to all men by public proclamation from the Executive or some public act by necessary implication equivalent to such a proclamation."

The same view was maintained by Henry Clay in the debates upon the Act of 1818 (Annals of Congress, March 18, 1818, p. 1415): "But was there not, he asked, a considerable alteration since the Act of 1817 in our posture in respect to the war between Spain and the provinces. The Executive had since declared to the whole world that the condition of the United States is one of neutrality in regard to the contest. Not that only, but that the war carrying on is a civil war, and that we owe to both parties all the obligations of neutrality—the obligations due to a party in a civil war being very different from those due to a people in rebellion, and demanding, therefore, a different state of our laws."

President Monroe took the contrary view in his message of December 2, 1817, and used language which not only amounted to a

present recognition of the colonies as belligerants, but imported that they had been so recognized at "every stage of the conflict" (Appendix H). Judge Brown, of New York, has taken a similar position in "The Ambrose Light," 25 Fed. Rep., at pp. 443–7, but has been ably answered by Dr. Wharton in the Albany Law Journal (Appendix J).

It must be remembered that the legislators of 1816–17, who passed the act under consideration, had not the benefit of Monroe's message, and their meaning must be construed in view of the information then available. President Madison had most carefully abstained from any language which would import a formal recognition of belligerency. Thus, in his message of December 26, 1816, he had referred to the inefficacy of existing laws "to prevent violations of the obligations of the United States as a nation at peace toward belligerant parties and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States," and to the respect due "to the neutral and pacific relations of the United States" (Appendix F). Monroe's letter of January 19, 1816, to Onis (Appendix E) was a mere personal communication; and Dallas's instructions of July 3, 1815, therein referred to (Appendix D), had not been published, at least not officially. Monroe's letter of January 10, 1817, to Forsyth (Appendix G) was only an informal communication for the benefit of a Congressional committee, and, like the two papers last referred to, was not of a sufficiently formal character to work so great a change in the nation's interest and those of our citizens as is effected by a recognition of belligerent rights, technically speaking.

Yet these are all of the papers which have been considered as working that result during Madison's administration. Mr. Wheaton, in the appendix to the fourth volume of his reports, placed the earliest recognition at November 17, 1818 (p. 23).

There were afterwards some discussion in Congress as to whether the Treasury order of 1815 admitting insurgent flags to our ports amounted to a recognition of belligerency. Mr. Clay held that it did not (Annals of Congress, March 18, 1818, p. 1415). Mr. Smith pointed out that the flag of St. Domingo (Hayti) was admitted (p. 1427); but it was never claimed that the emperors, kings, and presidents of that island were in any way formally recognized. Mr. Lowndes, differing with Mr. Clay, "denied that the Executive had the power, either by the Constitution or by law, to exclude any flag from our ports—that power was vested in Congress alone" (March 19, 1818, p. 1433). The Treasury order recognized no belligerent because it specified none. It gave no list of flags which were to be admitted; nor did it even specify that the flag should be identified as that of any particular revolutionary body. Apparently the green and yellow petticoat which Mr. Midshipman Easy floated over his prize vessel, according to Capt. Marryat, would have come within its provisions.

It may be urged that this court subsequently, in various opinions, stated that the belligerency of the Spanish-American colonies had been recognized throughout the war, and that some of these opinions were rendered upon controversies which arose prior to Monroe's message of December 2, 1817. This is true, aud the court doubtless relied for the statement upon that or some subsequent message. It was not in any case material to the decision, for, after belligerency was once recognized, the cruisers of the belligerent state were entitled to immunity from the charge of piracy, irrespective of the date of their naval operations. If an insurrection begins in October and an insurrectionary cruiser is captured in November, a recognition of belligerency in December justifies all acts of the cruiser which were in a true sense belligerent. A recognition of belligerency does not even profess to be given upon the day when belligerency commences. It is the recognition of a past as well as a present fact. In those early days of slow intelligence it might not seldom be given after the war was really over, just as, two years earlier, the battle of New Orleans was fought after peace had been made. These court opinions, like the message upon which they were based, were unknown to the legislators of 1816–17.

It may safely be affirmed that Congress did not, in enacting the law of 1817, have the distinction between mere insurgency and belligerency in mind; for if so, it would have perceived that the new act would probably not be applicable even to the Republic of Buenos Ayres, which was then the most prominent and best established of all the insurgents.

The states whose belligerency was recognized by Monroe in 1817 were doubtless those whose independence was recognized in 1822, namely, New Granada and Venezuela (afterwards united as Colombia), Buenos Ayres (officially known as the United Provinces of South America), and Chile—the successful revolts of Peru and Mexico having been later than 1817. That the recognition of belligerency did not apply to all the minor insurgencies has been expressly ruled by this court in "The Nueva Anna and Liebre," 6 Wheat. 193.

(*b*) Certain Spanish or Portuguese districts whose belligerency had not then been and never was recognized. One of these—Paraguay—has been already referred to. This may have attracted no attention, as our people did not come into contact with it, though probably informed of its existence, 4 Am. State Papers, Foreign Relations, pp. 219, 222, 225, 250, 265, 278, 339.

Second only to Buenos Ayres, however, if not first of all the powers of Latin-America in capacity to make trouble, was the now forgotten but then world-famous General Artigas, who held sway with various ebbs and flows of fortune on the east bank of the La Plata river in the old Spanish intendency of Banda Oriental, called by him the Oriental Republic, and now known as the independent Republic of Uruguay. Any recognition of his claims would have

given offense, not only to Spain, but to Portugal, and even to Buenos Ayres, for all three laid claim to his territory, and with all three he was at war. His main city, Montevideo, was generally in Portuguese control. Yet cruisers under the "Artigan flag," and claiming to be commissioned by Artigas, were on all the seas. They did the main injury complained of by the Portuguese Government. H. R. Ex. Doc. No. 53, 32d Cong., 1st Sess., pp. 193–200; see also the "Gran Para," 7 Wheat. 471. Notices of his proceedings are to be found in 4 American State Papers, Foreign Relations, at pp. 173–4, 218, 219, 221, 225, 250, 268, 274, 288, 289, and in argument of counsel, 7 Wheat., pp. 476–481. His country had been claimed by both Spain and Portugal. Portugal had surrendered it in 1778, but renewed the claim when the South American revolutions broke out. It was the Portuguese who finally conquered Artigas, and the country was then for a time annexed to Brazil. In 1817 and 1818 the Artigas revolt seems generally to have been regarded as directed against Portugal rather than against Spain, but Monroe's recognition of belligerency in December, 1817, applied only to "the contest between Spain and the colonies."

This was pointed out by Attorney General Wirt in his letter of November 6, 1818, to the district attorney at Baltimore (1 Op. 249; Appendix I hereto). He says that Monroe's message is "not pointed at Artigas," and that the recognition of civil war in Buenos Ayres does not recognize him as a belligerent. Mr. Wirt spoke as a member of Monroe's Cabinet, and his utterance can not be controverted.

As late as 1822, after Artigas had been conquered by the Portuguese, his nonrecognition as a belligerent was still familiarly used to illustrate arguments (7 Wheat., at p. 509).

(*c*) Hayti.—This unfortunate island had long been free from the sovereignty of France, but its independence had not been recognized by us, and was not so recognized prior to 1862, because it was under negro domination. At that time it was divided between two negro chieftains who were engaged in a bloody contest, but whose belligerency had not been recognized. As stated by Attorney General Wirt (*ut sup.*), "our Government had never acknowledged those sovereignties, not even by the recognition of a civil war between themselves or their mother countries." Henry Clay said that "we had not recognized the war as a civil war, etc., or in any manner so regarded it as that a case arising under it in our courts could be viewed in the same light as a case occurring in the existing conflict in South America." Annals of Congress, March 18, 1818, p. 1425.

(*d*) Amelia Island and Galveston.—These places were the rendezvous of privateers (Aury, their best-known leader), claiming the right to fly the Venezuelan, Artigan, and other revolutionary flags. (1 Whart. Int. Law Dig., Sec. 50*a*.) They were practically pirates, as stated by Monroe (Appendix H).

(2) The law as settled and understood at the time of the Act of

1817.—The Act of 1794, in its corresponding provision, applied only to cruises and hostilities in the service of a foreign "prince or state." These words had been construed in one case only, that of Hoyt *vs.* Gelston, afterwards known as Gelston *vs.* Hoyt, 13 Johns, 141, 561, decided in the courts of the State of New York in 1816, then pending in this court on writ of error, but as yet unargued.

It was an action of trespass against the collector and surveyor of the port of New York for seizing the ship "American Eagle," her tackle, apparel, etc. The seizure was made July 10, 1810, by orders of President Madison, under that provision of the Act of 1794 which corresponds to our present Section 5283. The ship was intended for the service of Pétion against Christophe in the Island of Hayti. As above stated, neither of these negroes was recognized as independent, nor even as belligerent. The former was a president, the latter a king. Counsel argued that their governments were *de facto* sovereignties (pp. 145–146). The courts unanimously held that such a sovereignty could not be recognized as a prince or state by them prior to its recognition by the Government.

Whether a *de facto* or belligerent sovereignty came within the statute after its recognition as a belligerent by the Executive was a question which could not have arisen in the case, and which had not been discussed; nor was it discussed subsequently upon the arguments in this court, or in the opinions here rendered (3 Wheat. 246).

Had the belligerency of Pétion and Christophe been recognized, there can be little doubt that they would have been held to be within the statute of 1794, for at the following term in "The Estrella," 4 Wheat. 298, 310, in discussing the same statute, the court were of opinion that the belligerent colony of Venezuela was within its terms.

(3) History of the Act of 1817.—This act was reported by the Foreign Affairs Committee of the House of Representatives. Mr. Samuel Smith, of Maryland, one of the members of that committee, is authority for the statement that it was originally due to a request from the Portuguese minister, Correa. (Annals of Congress, March 18, 1818, p. 1421.) The correspondence with that minister is annexed to a message of January 28, 1852. (H. R. Ex. Doc. No. 53, 32d Cong., 1st Sess.) His communication, pp. 161–3, bears date December 20, 1816, and was called forth by threatened war between Buenos Ayres and Portugal. He does not claim that the act of 1794 is inapplicable to Buenos Ayres, but that its provisions are not sufficiently effective. Mr. Forsyth says that there were similar complaints also from the British and French ministers. (Annals, p. 1409.) Secretary Monroe writes him on December 27 that the President has addressed a message to Congress on the subject (p. 163). This message is the one of December 26, printed as Appendix F. Further correspondence between Secretary Monroe and

Mr. Forsyth, chairman of the committee, is to be found in the Annals of Congress, 1816–17, at pp. 1080–5. Neither this correspondence nor the bill reported by Mr. Forsyth, nor yet the debate upon that bill, pp. 715–767, indicates any idea that the then existing law was inapplicable. The bill did not contain the words "colony, district, or people" until the very moment before it passed to a third reading.

These words were inserted by amendment, in some way not shown by the Journal or the reported debates, on January 28, 1817 (Annals, pp. 767–8). Mr. Tucker, of Virginia, in the following year stated that "there had been in our courts a decision which seemed to indicate the necessity of using some farther designation in order to take in the case of the Spanish colonies" (Annals, March 18, 1818, p. 1420). He had not been a member of the committee and had not taken part in the votes on the bill, but probably his information was correct so far as it went, and the word "colony" was inserted to avoid doubt in this particular. Buenos Ayres and the other Spanish American states each represented an old viceroyalty or colony. But what was the decision referred to, and why were the words "district or people" added also?

Doubtless the decision referred to by Mr. Tucker was that of the New York courts in Gelston *vs.* Hoyt, the writ of error in which case had been issued in or before May, 1816 (13 Johns. 590), and which was then in the hands of Attorney General Rush, who argued it a few weeks later in this court (3 Wheat. 278). Mr. Smith, one of the committee, so supposed (Annals, March 18, 1818, p. 1423). We may assume that the Attorney General called attention to the ambiguity in the existing law, and fitted the proposed law, not only to the case of the revolting colonies whose belligerency had perhaps been recognized, but to that of Pétion and Christophe, who were certainly not recognized belligerents, and probably with an eye also to Artigas, who claimed not a colony but a mere intendency or province, and who was also without recognition.

The very close relations then existing between the Madison Administration and the leaders of the House make this assumption an unusually safe one; and that Mr. Rush probably had the distinction between belligerency and nonbelligerency in mind, as well as the weakness of the Haytian case in this respect, is shown by his arguments at 3 Wheat. 284. That case was curiously similar to "The Carondelet," 37 Fed. Rep. 799.

The history of the act, therefore, tends to show that it was intended to cover at least the case of every revolutionary body, recognized or unrecognized, which made *bona fide* claim to rights of sovereignty. The only doubt left was over the application of the act to the Galveston and Amelia Island freebooters, and to make the criminal law complete the Act of 1819 was passed.

Chief Justice Marshall afterwards said that the Act of 1817

"adapts the previous laws to the actual situation of the world." "The Gran Para," 7 Wheat. 471, 489.

If the language of the act was suggested by Gelston *vs.* Hoyt, the presence of the word "district" is accounted for. The record in that case always described the alleged foreign states as "that part of the island of St. Domingo which was then under the government of Pétion," and "that part of the island of St. Domingo which was then under the government of Christophe" (3 Wheat. 258, 266, 270, 274, 323). In Spanish America the word represented the smallest legal subdivision—less than an intendency, province, or bishopric (4 Am. State Papers, Foreign Relations, pp. 219, 224, 249, 329, 333, 337).

(4) Legislation against privateering during Monroe's Administration.—The only notable change in the situation after the Act of 1817 was in President Monroe's definite recognition of the belligerency of the Spanish colonies in December of that year. Gelston *vs.* Hoyt had been argued and decided in this court, and United States *vs.* Palmer, 3 Wheat. 610, had also been certified and decided, when the Act of 1818 came up for debate; but the former decision simply affirmed the rulings of the State courts, while the latter turned on the Piracy Act of 1790, and did not construe the Acts of 1794 and 1817.

The Act of 1818 was a codification of the prior legislation, and the debates upon it are relevant only in so far as they have been above quoted as throwing light on the proceedings of the previous year.

The Act of 1819 is particularly notable on account of the third section, which is not directed against piracy, but against nonpiratical aggressions, searches, etc., conducted by privateers of belligerent powers. The right of visitation and search by public armed belligerent vessels seeking contraband has never been disputed; and it has always been admitted that this right exists on the part of either belligerent, whether recognized as independent or not. In short, as shown, recognition of belligerency is the same as recognition of independence, so far as rights and liabilities relating to the war are concerned.

Section 3 authorizes our merchant vessels to resist all searches, except by "a public armed vessel of some nation in amity with the United States." The belligerent is thus clearly (and properly) recognized as a "nation," whether it is treated as independent for all purposes or not. Yet the word "nation" imports independence in no less degree than the words "prince or state;" and the act throws strong light on the contemporary understanding of the scope of these words.

(5) Contemporary Construction.—That the Act of 1794 was understood as covering the case of a State recognized as belligerent only, and hence that the later acts were understood as including

something more, is indicated by contemporaneous references, so far as any can be found.

We may refer first to the case of "The Estrella," 4 Wheat. 298, decided at February term, 1819. It arose under a capture by the Venezuelan privateer "Constitution," on April 24, 1817. There was a recapture by an American vessel, and the prize thus came before the court at New Orleans for adjudication. The privateer was found to have a regular commission from Bolivar, dated in 1816 or earlier; but she had violated the Act of 1794, Section 2 (which is the same as the corresponding section of 1818, omitting the "colony, district, or people"), by enlisting men at New Orleans, provided Venezuela was a "state" within the meaning of that statute. The court so held (p. 310), thus confirming our view that recognition of belligerency makes the belligerent a "state."

In "La Conception," 6 Wheat. 235, 239, the court refer to Buenos Ayres as a "government."

In "The Nueva Anne" and "Liebre," 6 Wheat. 193, there was offered in proof the record of a prize court at "Galveztown," under the "Mexican Republic." This court refused to recognize the belligerent right claimed, because our Government had not "acknowledged the existence of any Mexican republic or state at war with Spain."

"The Gran Para," 7 Wheat. 471, was captured in the summer of 1818 by "The Irresistible," a privateer flying the colors of General Artigas so-called "Oriental Republic." The case turned on another point, and is chiefly notable from the full discussion of Artigas' position by counsel and because Chief Justice Marshall referred to Buenos Ayres as a state within the meaning of the Act of 1794 (p. 488). Another capture by the same notorious privateer was before this court in "La Nereyda, 8 Wheat. 108. She was herself libelled under the neutrality laws in May, 1819, for cruising "in the service of some foreign district or people to the said attorney unknown," as appears from the record, but the proceeding was dismissed on a technicality. "The Irresistible," 7 Wheat. 551. That this "district or people" referred to the Artigas party is shown by correspondence with the Portuguese minister. H. R. Ex. Doc. No. 53, 32d Cong., 1st Session, pp. 169–70, 173–74.

"The Monte Allegre," 7 Wheat. 520, was a prize cause arising out of the capture of a Portugese merchantman by an American-owned privateer sailing under the Artigan flag. Chief Justice Marshall said that there could be "no doubt but that the captures made by the 'Fortuna' are in violation of the laws of the United States, enacted for the preservation of our neutrality."

In "The Antelope," 10 Wheat. 66, 125, Chief Justice Marshall said that a cruiser which was outfitted in Baltimore in 1819 and sailed under the "Artigan flag" had "violated the neutrality of the United States;" evidently referring to Section 2 of the Act of 1818, although that flag did not belong to a recognized belligerent.

It may be added that John Forsyth, who had had charge in the House of Representatives of the Acts of 1817 and 1818, was Secretary of State at the time of the revolution in Texas. He evidently then regarded the operation of these acts as in nowise dependent upon a recognition of belligerency. In his circular instruction to district attorneys on November 4, 1835, he says (H. R., 24th Cong., 1st Sess., Doc. No. 256, p. 36): "You are therefore earnestly enjoined, should the contest begin, to be attentive to all movements of a hostile character which may be contemplated or attempted within your district, and to prosecute without discrimination all violations of those laws of the United States which have been enacted for the purpose of preserving peace and of fulfilling the obligations of treaties with foreign powers."

On February 24, 1836, Secretary Forsyth instructed the district attorney at Nashville to prosecute for the offense of enlisting troops to aid the insurgents. Id. p. 37.

On November 13, 1835, Governor White of Louisiana had issued a proclamation calling attention to the statute creating this offense (H. R., 25th Congr., 2d Session, Doc. No. 74, p. 10) in pursuance of a letter from Forsyth (p. 3).

The Texan declaration of independence bears date March 2, 1836 (Sen., 24th Congr., 1st Session, Doc. No. 415, p. 3).

(6) Subsequent legislation.—In 1837 an insurrection broke out in Canada. Belligerency of the insurgents was never recognized. Van Buren, in his annual message of 1838, shows clearly that he regards them in the same light in which the present Cuban insurrectionists have been regarded. A neutrality act was passed, however; and the words "colony, district, or people" were regarded as sufficient for the case. (Act of March 10, 1838, Ch. 31, Secs. 1, 2, 5.) The act expired in two years by its own limition (Sec. 9).

In his Albany Law Journal article which is set forth in the appendix to this brief, Dr. Wharton says: "The 'Caroline' was a vessel which was employed in 1840 by Canadian insurgents in an attack on Canada ports. There was not a shadow of a pretense that the forces of whom she was one of the weapons were recognized as belligerents by either Great Britain or the United States."

3. If any executive recognition is necessary to put the statute in operation, that recognition had been given when the libel was filed.

We have already pointed out that, as shown by Dr. Wharton, there is such a thing known to international law as a recognition of insurgency as distinguished from a recognition of belligerency. Whether the statute is applicable to insurrections so obscure or recent that they have never received executive recognition from this Government at all (as in "The City of Mexico," 28 Fed. Rep. 148, and see also United States *vs.* Quïtman, 27 Fed. Cas. 680) is a question not involved in the present case, and which we shall not argue; for the amplest recognition of insurgency had already been given before May 23, 1896, when this forfeiture was incurred.

On June 12, 1895, a formal proclamation was issued by the President and countersigned by the Secretary of State, informing the people of the United States that "the island of Cuba is now the seat of serious civil disturbances, accompanied by armed resistance to the authority of the established Government of Spain," and that the so-called "neutrality act" was applicable to the case. A copy of this proclamation is annnexed hereto as Appendix K.

In his message of December 2, 1895, the President informed Congress that the insurrection "now exists in a large part of the eastern interior of the island," and that assistance thereto on the part of our citizens would be a violation of neutrality (Appendix L).

Since May 23 a further proclamation and message have been promulgated, copies of which are also annexed hereto as Appendices M and N, not as necessary to the case, but in order to give a complete official history of the Cuban insurrection up to date.

If necessary, they would be competent; for, as above shown, the executive recognition is of a past fact. It does not constitute the condition of insurgency or belligerency, as the case may be, but gives the information necessary to enable the court to take notice of it.

When a vessel belonging to citizens of the United States commits hostilities upon the high seas against a friendly power, her act is *prima facie* piratical. She is forfeit, and her owners, officers, and crew are liable to be hanged. See "The Ambrose Light," 25 Fed. Rep. 408, and authorities cited; Lawrence, International Law, Sec. 122; Dana's Wheaton, Sec. 124, note. If the act is done in the interests of a colony, district, or people struggling for independence, then it is freed from this imputation, and the punishment is under a different and milder law. How is this fact to be established? It is matter of judicial notice, not proof. It is not in its nature susceptiof proof by witnesses, and, besides, from motives of policy the judiciary looks to the Executive for information. It does not ask whether the Executive has conceded all the rights of war as against a neutral nation. It asks only whether a *bona fide* conflict of arms exists. The Executive informs it of "serious civil disturbances accompanied by armed resistance to the authority of the established Government" which call our neutrality act into play. What more is needed?

As the present insurrection is for independence it is not necessary to inquire whether the pursuit of this object is a prerequisite to the operation of the statute. This does not appear to be required, and the statute seems equally applicable to revolts for the control of an already established state, like the recent Chilean war, or for civil rights, like our revolution before July 4, 1776, the Buenos Ayres revolution before 1816, and the recent proposed revolt in Johannesburg.

4. The bond or stipulation for the release of the vessel is not au-

thorized by law, and she should be ordered back into the custody of the marshal.

Mere matters of practice are not reviewable by this court. Interlocutory decrees and orders are, however, reviewable, when they involve the merits of the case and in effect modify any final decree which may be entered for the complainant. Instances of review of interlocutory proceedings at law and in equity are found in Buckingham *vs.* McLean, 13 How. 150; Railroad *vs.* Soutter, 2 Wall. 510, 521; Removal Cases, 100 U. S. 457, 475; and Worden *vs.* Searls, 121 U. S. 14, 26.

The interlocutory order by which a bond of $10,000 was substituted for the vessel as defendant in the case bears directly upon the merits. If allowed to stand, it prevents a full recovery of the value of the vessel, no matter how inadequate the bond may turn out to be. This is well settled and is exemplified by the case of "The Wild Ranger," 2 New Rep. 402, 403, set forth and approved by this court in the Haytian Republic, 154 U. S. 118, 127. See also "The Oregon," 158 U. S. 186, 211.

That such an order is reviewable in the appellate court, when it is not discretionary, is clearly implied in "The Wanata," 95 U. S. 600, 611, and seems to be recognized in United States *vs.* Ames, 99 U. S. 35, 39–42. A similar interlocutory question was considered on the merits in "The City of Norwich," 118 U. S. 468, and four justices were for reversal.

(1) The district judge had no authority to release the vessel by any form of procedure.—The Revised Statutes very clearly contemplate that seizures for breach of the neutrality laws shall not be subject to a release upon bond or stipulation.

Section 941 provides for such releases in proceedings in general as follows: "When a warrant of arrest or other process *in rem* is issued in any cause of admiralty jurisdiction, except the cases of seizure for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge," etc.

The case of seizures for forfeiture to the United States are provided for by Section 938, as follows: "Upon the prayer of any claimant to the court that any vessel, goods, wares, or merchandise seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels or any part thereof should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court or before a commissioner appointed, etc. . . . If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court,

shall execute a bond to the United States, etc., . . . the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant." . . .

The power of this court to prescribe rules of practice is to be exercised "in any manner not inconsistent with any law of the United States," Section 917. As the laws above quoted are clearly intended to provide for all cases of seizure for forfeiture to the United States in which bail is to allowed at all, it is respectfully submitted that rule 11 of this court, under which Judge Locke proceeded, is not to be construed as applicable to a prosecution for forfeiture under the neutrality act.

The learned judge bases his contrary decision very largely upon the decision of Mr. Justice Story and Judge Davis in "The Alligator" 1 Gall. 145. In that case the court refer to an invariable practice in all proper cases of seizure to take bonds for the property whenever application has been made by the claimant for the purpose (p. 148). This practice is ascribed to the general admiralty procedure, statutory authority being regarded as unnecessary. The point was not necessary to the decision of the motion then before the court, as the claimant had been allowed to give bond without objection, and was attempting to avoid payment thereunder by alleging its irregularity, so that he was affected with an estoppel. The opinion of the same judges in "The Struggle," 1 Gall. 476, was given under similar circumstances. The latter opinion bears evidence that some doubts respecting the validity of the procedure had crept into the minds of the judges, and they put their decision solely on the ground "that where the claimant voluntarily accepts a delivery on bail, it is an estoppel of his right to contest the validity of the security."

The practice thus referred to was afterwards made statutory by the Act of March 3, 1847, Ch. 55, which contained no exception. In the revision, however, it appears with the exception above quoted (Section 941) and the present Federal legislation on the subject, which is contained in the paragraphs of the Revised Statutes above quoted, presents the question in an entirely different light from that in which it appeared to Mr. Justice Story and Judge Davis.

The remarks of this court in United States *vs.* Ames, 99 U. S. 35, 39–40, were confined to revenue cases.

It is certainly extraordinary that a boat seized for a crime so dangerous to the peace of the United States as the commission of hostilities against a friendly state should before hearing be unconditionally released upon a bond for $10,000, and set at liberty to renew her unlawful depredations.

The statute (Section 938) seems carefully worded to avoid a release upon bail under such grave charges. If the boat is held without probable cause, her owners can recover demurrage.

There is no real hardship, as supposed by the learned judge, in

holding the boat under custody of the United States marshal pending suit. Vessels libelled for forfeiture to the United States, when circumstances do not permit an immediate hearing upon the merits, are not detained entirely from lawful occupations. It may be proper to state that vessels thus detained during the present Cuban insurrection have been allowed by authority of the Attorney General to pursue their ordinary peaceful avocations under supervision of a deputy marshal placed on board, and that no reasonable request for such permission has been refused, except after such flagrant contempts and frauds upon the United States as cut the owners off from any right to consideration save of strict legal right.

(2) Even if it were proper to release the vessel under any circumstances, no case for such release was here presented.—Section 938 above quoted provides that in case of seizures for violation of the revenue or navigation laws, the court shall appoint three appraisers. Is it proper, for the violation of laws so much more serious in nature, to allow her to be appraised by two only?

Moreover, the application was, in any view of the law, not based upon absolute right, but addressed to the sound discretion of the court. "The Struggle," 1 Gall. 476; "The Mary N. Hogan," 17 Fed. Rep. 813. A release in such a case as this should not be given in the absence of a defense upon the merits, and without any affidavit of merits, especially when the petition for release, by alleging that the vessel had been engaged by its owners "exclusively in their legitimate business of towing and wrecking" from October 15 to November 7, 1896, had given good cause to suspect that she was engaged in some illegitimate business at the time of the offense charged.

Under such circumstances it is submitted that no relief should have been given until the petitioners not only deposed to their good faith, but stood cross-examination thereon. Yet the learned district judge seems to have regarded the district attorney as still under obligation to show *prima facie* that the vessel would be used for further violations of law if allowed to go free, before the owners could be asked to show their good faith. In a subsequent proceeding for forfeiture of the "Three Friends," the same learned judge has imposed the condition that a Government officer remain on board.

It is respectfully submitted that his unconditional order in the present case went beyond the limits of judicial discretion, even if he had any discretionary power to release the vessel.

It is therefore respectfully submitted that the decree should be reversed and the case remanded to the district court with directions to resume custody of the vessel and proceed to the merits.

JUDSON HARMON,
Attorney General.
EDWARD B. WHITNEY,
Assistant Attorney General.

APPENDIX.

A.

[Act of 1817, c. 58.]

AN ACT more effectually to preserve the neutral relations of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any such ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities, or to aid or co-operate in any warlike measure whatever, against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information and the other half to the use of the United States.

Sec. 2. *And be it further enacted,* That the owners of all armed ships sailing out of the ports of the United States and owned wholly, or in part, by citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners in cruising or committing hostilities, or in aiding, or co-operating, in any warlike measure against the subjects, citizens, or property of any prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 3. *And be it further enacted,* That the collectors of the customs be, and they are hereby, respectively, authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart from the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any prince or state, or of any colony, district, or people,

with whom the United States are at peace, until the decision of the President be had thereupon, or until the owner enters into bond and sureties to the United States, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by the owner or owners in cruising or committing hostilities, or in aiding or co-operating in any warlike measure against the subjects, citizens, or property of any prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 4. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel in the service of a foreign prince or state, or any colony, district, or people, or belonging to the subjects or citizens of any such prince, state, colony, district, or people, the same being at war with any foreign prince or state with whom the United States are at peace, by adding to the number or size of the guns of such vessels prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned, at the discretion of the court in which the conviction shall be had, so as that such fines shall not exceed one thousand dollars, nor the term of imprisonment more than one year.

Sec. 5. *And be it further enacted,* That this act shall continue in force for the term of two years.

Approved, March 3, 1817.

B.

[Act of 1818, c. 88.]

AN ACT in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years. [See Act of 1794, Sec. 1; Rev. St., Sec. 5281.]

Sec. 2. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer which at the time of its arrival within the United States was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States, to enlist or enter himself, to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. [See Act of 1794, Sec. 2; Rev. St., Sec. 5282.]

Sec. 3. *And be it further enacted*, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States. [See Act of 1794, Sec. 3; Act of 1817, Sec. 1; Rev. St., Sec. 5283.]

Sec. 4. *And be it further enacted*, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with

intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person, so offending, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought. [See Rev. St., Sec. 5284.]

Sec. 5. *And be it further enacted,* That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the forces of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year. [See Act of 1794, Sec. 4; Act of 1817, Sec. 4; Rev. St., Sec. 5285.]

Sec. 6. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years. [See Act of 1794, Sec. 5; Rev. St., Sec. 5286.]

Sec. 7. *And be it further enacted,* That the district courts take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. [See Act of 1794, Sec. 6; Rev. St., Sec. 5287.]

Sec. 8. *And be it further enacted,* That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or

other armed vessel shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring of the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace. [See Act of 1794, Sec. 7; Rev. St., Sec. 5287.]

Sec. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart from the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States. [See Act of 1794, Sec. 8; Rev. St., Sec. 5288.]

Sec. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace. [See Act of 1817, Sec. 2; Rev. St., Sec. 5289.]

Sec. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally

consist of arms and munitions of war, when the number of men shipped on board, or other circumstances shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property, of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had therein, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act. [See Act of 1817, Sec. 3; Rev. St., Sec. 5290.]

Sec. 12. *And be it further enacted,* That the act passed on the fifth day of June, 1794, entitled "An act in addition to the act for the punishment of certain crimes against the United States," continued in force for a limited time by the Act of the second of March, 1797, and perpetuated by the act passed on the 24th of April, 1800, and the act, passed on the 14th day of June, 1797, entitled "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act passed the third day of March, 1817, entitled "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally, repealed: *Provided, nevertheless,* That persons having heretofore offended against any of the acts aforesaid, may be prosecuted, convicted, and punished as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

Sec. 13. *And be it further enacted,* That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason or any piracy defined by the laws of the United States. [See Act of 1794, Sec. 9; Rev. St., Sec. 5291.]

Approved April 20, 1818.

C.

[Act of 1819, c. 77.]

AN ACT to protect the commerce of the United States and punish the crime of piracy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and hereby is, authorized and requested to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant vessels of the United States and their crews from piratical aggressions and depredations. [See Rev. St., Sec. 4293.]

Sec. 2. *And be it further enacted,* That the President of the United States be, and hereby is, authorized to instruct the commanders of

the public armed vessels of the United States to subdue, seize, take and send into any port of the United States any armed vessel or boat, or any vessel or boat the crew whereof shall be armed and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas. [See Rev. St., Sec. 4294.]

Sec. 3. *And be it further enacted*, That the commander and crew of any merchant vessel of the United States, owned wholly or in part by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure which shall be attempted upon such vessel, or upon any other vessel owned as aforesaid by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States; and may subdue and capture the same; and may also retake any vessel owned as aforesaid which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States. [See Rev. St., Sec. 4295.]

Sec. 4. *And be it further enacted*, That whenever any vessel or boat from which any piratical aggression, search, restraint, depredation, or seizure shall have been first attempted or made, shall be captured and brought into any port of the United States, the same shall and may be adjudged and condemned to their use, and that of the captors, after due process and trial, in any court having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought; and the same court shall thereupon order a sale and distribution thereof accordingly, and at their discretion. [See Rev. St., Sec. 4296.]

Sec. 5. *And be it further enacted*, That if any person or persons whatsoever shall, on the high seas, commit the crime of piracy, as defined by the law of nations, and such offender or offenders shall afterwards be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof, before the circuit court of the United States for the district into which he or they may be brought, or in which he or they shall be found, be punished with death. [See Rev. St., Sec. 5368.]

Sec. 6. *And be it further enacted*, That this Act shall be in force until the end of the next session of Congress.

Approved March 3, 1819.

Made perpetual by Act of January 30, 1823, c. 7.

D.

[Dallas' instructions to Collectors.]

TREASURY DEPARTMENT,
3rd July, 1815.

P. L. B. DUPLESSIS, Esq.,
Collector, New Orleans.

SIR: Your letter of the 29th May has been submitted to the consideration of the President.

It does not appear that such general instructions as you mentioned have issued from this department, relative to the entry of vessels belonging to the provinces of Spain; but it is the President's desire that the intercourse with those provinces which are in a state of revolt should strictly conform to the duties of the Government under the law of nations, the acts of Congress, and the treaties with foreign powers.

1. There is no principle of the law of nations which requires us to exclude from our ports the subjects of a foreign power in a state of insurrection against their own Government. It is not incumbent upon us to take notice of crimes and offenses which are committed against the municipal laws of another country, whether they are classed in the highest grade of treason or in the lowest grade of misdemeanor. Piracy is an offense against the laws of nations, and every civilized government undertakes to punish the pirate when brought within its jurisdiction, but an act of revolt or rebellion against a sovereign must not be confounded with an act of piracy, which is denominated hostility against the human race.

Any merchant vessel, therefore, which has not committed an offense against the law of nations, being freighted with a lawful cargo and conforming in all respects to the laws of the United States, is entitled to an entry at our custom-houses whatever flag she may bear. She is also entitled to take on board a return cargo and to depart from the United States with the usual clearance.

2. But while a public war exists between two foreign nations, or when a civil war exists in any particular nation, the provisions of the Act of the 5th of June, 1794 (3 vol., 88), must be strictly enforced. Under the cover of commercial intercourse no enlistment must be permitted, except of the transient citizens or subjects of a foreign nation enlisting on board of the vessel belonging to their own country in the manner authorized by law. No vessel must be fitted for war, the force of armed vessels must not be augmented, and military enterprises must not be set on foot within the territory and jurisdiction of the United States with the intent to commit hostilities against any prince or state with whom the United States are at peace. These prohibitions, however, do not affect the right of the American citizens to sell in a course of fair trade any articles of

American product or manufacture, nor the right of foreign merchant vessels to purchase and carry any such articles.

3. There are two treaties in which the subjects of Spain are interested. First, the treaty of 1795 between the United States and Spain, and second, the treaty of 1803 (commonly called the Louisiana Convention) between the United States and France. As Spain has not herself recognized the independence of any of her colonies, the United States still considers all her subjects to be entitled to the benefit of the first treaty. The second treaty is in the nature of a compact with France, and all who were entitled to its benefits at the time of making it continue to be entitled to them. The subjects of Spain trading directly from Spain or from her colonies (whose independence, I repeat, has not been recognized) are therefore entitled, as well as the subjects of France, to the benefit of the 7th article of the treaty for the limited period of twelve years, without regard to the commotions either in Spain or in the colonies.

The President desires that you will regulate your official conduct upon the principles that have been stated, but if any extraordinary case occurs you will report it to this Department with all possible despatch.

I am, very respect'y, sir, yr. obt. sevt.,

A. J. DALLAS.

P. S.—Until otherwise instructed, sea letters are not to be granted to any vessels but those which are bound beyond the Cape of Good Hope.

E.

[Monroe's letter to the Spanish Minister, 1816.]

DEPARTMENT OF STATE,
January 19, 1816.

THE CHEVALIER DE ONIS:

SIR: . . . In reply to your third demand, the exclusion of the flag of the revolting provinces, I have to observe that in consequence of the unsettled state of many countries and repeated changes of the ruling authority in each, there being, at the same time, several competitors, and each party bearing its appropriate flag, the President thought it proper, some time past, to give orders to the collectors not to make the flag of any vessel a criterion or condition of its admission into the ports of the United States. Having taken no part in the differences and convulsions which have disturbed those countries, it is consistent with the just principles, as it is with the interests of the United States, to receive the vessels of all countries into their ports, to whatever party belonging and under whatever flag sailing, pirates excepted, requiring of

them only the payment of the duties and obedience to the laws while under their jurisdiction, without adverting to the question whether they had committed any violation of the allegiance of laws obligatory on them, in the countries to which they belonged, either in assuming such flag, or in any other respect. . . .

What will be the final result of the civil war which prevails between Spain and the Spanish provinces in America is beyond the reach of human foresight. It has already existed many years and with various success, sometimes one party prevailing and then the other. In some of the provinces the success of the revolutionists appears to have given to their cause more stability than in others. All that your Government had a right to claim of the United States was that they should not interfere in the contest or promote by any active service the success of the revolution, admitting that they continued to overlook the injuries received from Spain and remained at peace. This right was common to the colonists. With equal justice might they claim that we would not interfere to their disadvantage; that our ports should remain open to both parties, as they were before the commencement of the struggle; that our laws regulating commerce with foreign nations should not be changed to their injury. On these principles the United States have acted.

. . . . . .

I have the honor to be, &c.,

JAMES MONROE.

F.

[Madison's Special Message, 1816.]

DECEMBER 26, 1816.

To the Senate and House of Representatives of the United States:

It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force within the jurisdiction of the United States, or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce

in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

JAMES MADISON.

G.

[Monroe's Letter to Forsyth, 1817.]

DEPARTMENT OF STATE,
January 10, 1817.

SIR: In addition to the letter which I wrote to you on the 6th, in reply to the one which you wrote to me on the 1st instant, I have the honor to state that information has been received at this Department, from various sources, that vessels have been armed and equipped in our ports for the purpose of cruising against the commerce of nations in amity with the United States, and no doubt is entertained that this information was in some instances correct. The owners of these vessels have, however, generally taken care so to conceal these armaments and equipments, and the object of them, as to render it extremely difficult, under existing circumstances, to prevent or punish this infraction of the law. It has been represented—

1st. That vessels belonging to citizens of the United States or foreigners have been armed and equipped in our ports, and have cleared out from our custom-houses as merchant vessels; and, after touching at other ports, have hoisted the flag of some of the belligerents, and cruised under it against the commerce of nations in amity with the United States.

2dly. That in other instances other vessels, armed and equipped in our ports, have hoisted such flags after clearing out and getting to sea, and have in like manner cruised against the commerce of nations in amity with the United States, extending their depredations, in a few cases, to the property of citizens of the United States.

3dly. That in other instances, foreign vessels have entered the ports of the United States, and, availing themselves of the privileges allowed by our laws, have in various modes augmented their armaments, with pretended commercial views; have taken on board citizens of the United States as passengers, who, on their arrival at neutral ports, have assumed the character of officers and soldiers in the service of some of the parties in the contest now prevailing in our southern hemisphere.

Information, founded upon these representations, has from time to time been given to the attorneys and collectors of the respective districts in which the armaments are stated to have been made; but, from the difficulty of obtaining the necessary evidence to establish facts on which the law would operate, few prosecutions have been instituted.

In reply to your second inquiry, I beg leave to refer to the com-

munication from the Secretary of the Treasury to Committee of Ways and Means, during the last session of Congress, in the case of the "American Eagle," and to the papers enclosed herewith.

I have the honor to be, &c.,

JAMES MONROE.

Hon. JOHN FORSYTH,
Chairman Com. Foreign Relations.

H.

[Monroe's Annual Message, 1817.]

. . . . . .

It was anticipated at an early stage that the contest between Spain and the colonies would become highly interesting to the United States. It was natural that our citizens should sympathize in events which affected their neighbors. It seemed probable, also, that the prosecution of the conflict along our coast and in contiguous countries would occasionally interrupt our commerce and otherwise affect the persons and property of our citizens. These anticipations have been realized. Such injuries have been received from persons acting under authority of both the parties, and for which redress has in most instances been withheld. Through every stage of the conflict the United States have maintained an impartial neutrality, giving aid to neither of the parties in men, money, ships, or munitions of war. They have regarded the contest not in the light of an ordinary insurrection or rebellion but as a civil war between parties nearly equal, having, as to neutral powers, equal rights. Our ports have been open to both, and every article the fruit of our soil or of the industry of our citizens which either was permitted to take has been equally free to the other. Should the colonies establish their independence it is proper now to state that this Government neither seeks nor would accept from them any advantage in commerce or otherwise which will not be equally open to all other nations. The colonies will in that event become independent states, free from any obligation to or connection with us which it may not then be their interest to form on the basis of a fair reciprocity.

In the summer of the present year an expedition was set on foot against east Florida by persons claiming to act under the authority of some of the colonies, who took possession of Amelia Island, at the mouth of the St. Marys River, near the boundary of the State of Georgia. As this province lies eastward of the Mississippi, and is bounded by the United States and the ocean on every side, and has been a subject for negotiation with the Government of Spain as an indemnity for losses by spoliation or in exchange for territory of equal value westward of the Mississippi—a fact well known to the world—it excited surprise that any countenance should be given to this measure by any of the colonies. As it would be difficult to reconcile it with the friendly relations existing between the United

States and the colonies, a doubt was entertained whether it had been authorized by them or any of them. This doubt has gained strength by the circumstances which have unfolded themselves in the prosecution of the enterprise which have marked it as a mere private, unauthorized adventure. Projected and commenced with an incompetent force, reliance seems to have been placed on what might be drawn, in defiance of our laws, from within our limits; and of late, as their resources have failed, it has assumed a more marked character of unfriendliness to us, the island being made a channel for the illicit introduction of slaves from Africa into the United States, an asylum for fugitive slaves from the neighboring States, and a port for smuggling of every kind.

A similar establishment was made at an earlier period by persons of the same description in the Gulf of Mexico at a place called Galveston, within the limits of the United States, as we contend, under the cession of Louisiana. This enterprise has been marked in a more signal manner by all the objectionable circumstances which characterized the other, and more particularly by the equipment of privateers which have annoyed our commerce, and by smuggling. These establishments, if ever sanctioned by any authority whatever, which is not believed, have abused their trust and forfeited all claim to consideration. A just regard for the rights and interests of the United States required that they should be suppressed, and orders have been accordingly issued to that effect. The imperious considerations which produced this measure will be explained to the parties whom it may in any degree concern.

To obtain correct information on every subject in which the United States are interested; to inspire just sentiments in all persons in authority, on either side, of our friendly disposition so far as it may comport with an impartial neutrality, and to secure proper respect to our commerce in every port and from every flag, it has been thought proper to send a ship of war with three distinguished citizens along the southern coast, with instruction to touch at such ports as they may find most expedient for these purposes. With the existing authorities, with those in the possession of and exercising the sovereignty, must the communication be held; from them alone can redress for past injuries committed by persons acting under them be obtained; by them alone can the commission of the like in future be prevented.

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I

[Wirt's Opinion, 1818 (1 Op., 249).]

ATTORNEY GENERAL'S OFFICE,
November 6, 1818.

DEAR SIR: I have been deliberating, as well as I could, on the course of prosecution which should be adopted against the owners,

captain, and crew of the "Fourth of July" privateer; and, according to the request contained in your first letter, will now give you my opinion on that course.

First. I would indict the captain and crew as pirates, under the original act of Congress, which defines piracy. The prisoners will defend themselves under the commission of Artigas. I would object to that commission going before the jury as evidence, on the ground that it is not the commission of a sovereign recognized by our Government. In the case of the "Romp," in Richmond, the chief justice decided that a maritime commission, signed by the sovereign authority of the province of La Plata, furnished no justification to the crew of that vessel, because the court could not take notice of La Plata as a sovereignty until recognized by our Government, and, consequently, could not take notice of a commission purporting to be issued under the separate authority of that province; that, in the view of the court, La Plata must be considered as a dependence of the Spanish Crown until its separate existence as a nation had been acknowledged by the executive branch of the Government. In reply to this, they will quote the decision of the Supreme Court in the case of Palmer (2 Wheaton, 634, 635); and they will insist upon the correspondence of Mr. Monroe, when Secretary of State, with Don Onis, as well as the President's Message at the opening of the last session of Congress, to prove the admission of the Government that the South American colonies are to be considered as in a state of civil war.

On this limited recognition they will claim for Artigas the rights laid down in Palmer's case *qua supra*—that is, all the rights which war authorizes; and they will insist, under that opinion, "that persons and vessels employed in the service of the self-created government must be permitted to prove the fact of their being actually employed in such service by the same testimony which would be sufficient to prove that such vessel or person was employed in the service of an acknowledged state;" that, although, under that opinion, "the seal of such unacknowledged government cannot be admitted to prove itself," yet, that "it may be proved by such testimony as the nature of the case admits;" and, that "the fact that such vessel or person is so employed may be proved without producing the seal." To this there are two answers:

1. That the correspondence with De Onis and the message are not pointed at Artigas. They are to be considered in reference to the subject-matter, which alluded to a complaint of the Spanish minister touching the admission of Buenos Ayrean privateers into our ports. The section of country which Artigas holds is claimed by Portugal. This war is with the King of Portugal. The system of colonial government adopted by the two monarchies is alleged to be very different; that of Spain oppressive to the colonists in an extreme degree; that of Portugal comparatively liberal. According to the writers on the laws of nations the course which a neutral

holds in such wars is often directed by its sense of the justice of one side of the cause or the other; and, according to this sense, it relaxes at pleasure the rigor of its neutrality, still, however, keeping within the neutral pale. According to those writers a recognition of the independence of a revolted colony by a neutral is no cause of war to the parent nation, provided the revolted colony be in actual and exclusive possession of its territory and government. According to these principles our Government might recognize the government of Buenos Ayres without giving just cause of war to Spain; but if the Banda Grientale, as Portugal contends, is a separate territory, belonging to a distinct sovereign, such recognition of Buenos Ayres would not extend to that; because the American Government may perceive a justice in the one conflict which it does not in the other.

On the same principle the recognition of a civil war in Buenos Ayres, a Spanish colony, would not by any means carry along with it, as a consequence, the recognition of a civil war even in a Portuguese colony. You will not understand me as speaking in the name of the Government of the United States as to its seeing any difference in fact between the cases of Peurrydon and Artigas. I have no authority for making any such declaration. I speak only of the inference of fact which may or may not be fairly deduced from the correspondence and message in question. Those who rely on them as establishing the admission that a civil war exists between Artigas and Portugal must show that admission on the face of those documents, and cannot, for the reasons I have given, infer argumentatively by reasoning from the one case to the other. If the prisoners fail in showing that our Government had admitted the existence of a civil war between Artigas and Portugal, then the principles laid down in Palmer's Case, *qua supra*, can have no application to the case at bar, and this case will revert to the principles established by the chief justice in the case of the "Romp."

2. But suppose it be taken as admitted by the Government that a civil war does exist between Artigas and Portugal, does it follow that the citizens of the United States may participate in that war? The Supreme Court have not said that Palmer was not expressly indicted as a citizen of the United States, nor is the vessel charged as being United States property; and the principles laid down by the court are to be taken *secundum rem judicatam*, and not to be extended to another case. If the Banda Orientale is to be considered as part of the province of La Plata, and, consequently, as belonging to Spain, the fourteenth article of our treaty with Spain makes the case at bar a case of piracy (see that article); and whatever rights of war Artigas may have on the ground of his being engaged in a civil war, the citizens of the United States can not mingle in that war, on this hypothesis, without being guilty of piracy. (See what Vattel says, Book 3, Chapter 2, Section 15, as to enlisting troops in a foreign nation.)

As a branch of this opinion, the owners, etc, ought to be indicted as accessories to the piracy, under the ninth and tenth sections of the Act of 1790, "An act for the punishment of certain crimes against the United States."

Secondly. I would indict them under the Act of 1794, "An act in addition to the act for the punishment of certain crimes against the United States," laying a separate count under every section where the facts will warrant it. The defense here will be that Artigas is neither a foreign prince nor his province a state, according to the decision in Gelston *vs.* Hoyt. But as the previous prosecution for piracy can fail only on the ground that he is a prince and his government that of a state (under the decision in Palmer's Case and by our Government's recognition of a civil war), the prisoners will have taken this ground from under themselves. Artigas and his province are either a foreign prince and state or they are not. If they are, the indictment will lie under the Act of 1794; if they are not, the indictment for piracy will lie under the Act of 1790.

There seems to me no possibility of escaping this dilemma but by splitting the hair and saying there are so far a foreign prince and state as to excuse the prisoners from piracy, but yet not so far as to subject them under the Act of 1794. In the case of Gelston and Hoyt, the alleged princes and states were Petion and Christophe and St. Domingo. Our Government had never acknowledged these sovereignties, not even by the recognition of a civil war either between themselves or their parent countries; so that inference can be drawn from that case to this, if the court shall have previously excused the piracy on the ground of our recognition of a civil war. This simple recognition in Palmer's Case was considered, and decided as placing the belligerents on the same footing, for the purposes of war, as if they had been both regularly recognized sovereigns—an effect which would certainly bring the Act of 1794 to bear directly on the case.

Thirdly. I would indict them under the Act of 1817. As to the facts under this act, you have, I understand, only a single witness, but that there is in expectation a further proof. The grand jury, I presume, would not hesitate to find a bill on the testimony of this single witness; and if you think it unsafe to go into his rial on the evidence of this single witness, the court would, I presume, indulge you in a continuance until the next term.

WM. WIRT.

ELIAS GLENN, Esq.,
District Attorney for the United States, Baltimore.

J.

[Dr. Wharton's criticism of "The Ambrose Light," Alb. L. J., Feb. 13, 1886. p. 125.]

INSURGENTS AS BELLIGERENTS.

The following note from Mr. Becerra, minister from Colombia to the United States, was received by the Secretary of State in due course:

LEGATION OF COLOMBIA AT WASHINGTON,
Washington, April 9, 1885.

SIR: I yesterday had the satisfaction to receive a telegram from the President of Colombia, dated at the capital city of the Union on that same day, whereby that magistrate informs me that the entire republic is now pacified, with the exception of the ports of Panama, in the state of that name, and those of Sabanilla, Santa Marta, and Baranquilla, in the states of Bolivar and Magdalena. Active military operations, however, were still in preparation against the rebels who hold those points in our territory, and, with a view to making them more efficient, various measures of a highly important character had been adopted, two of which I have the honor, in obedience to special instructions, to bring to the knowledge of this Government.

By a first decree the Colombian Government, in the exercise of its authority and expressly enforcing pertinent provisions of its commercial and revenue laws, declares the ports of Sabanilla and Santa Marta, in the Caribbean Sea, and the fluvial port of Baranquilla, which is very near to Sabanilla, closed to foreign commerce. All attempts to import or export goods through the aforesaid ports, after this decree is known, will therefore be considered as illicit; any trade thus carried on will be considered contraband, and the vessels, crews, etc., engaged therein will be liable, besides forfeiting the goods, to the penalties in such cases provided by the Colombian laws.

By a second decree the Government of Colombia declares that the vessels which are now stationed at the entrance to the bay of Cartagena, in the port of that name, in the Carribbean Sea, and which are there embarrassing and even making war upon international commerce, carried on under the flags of various friendly nations, and by means of the vessels of the lines of regular communication which have long been established, do not belong to the United States of Colombia, and they have no right to fly, as they nevertheless do fly, the flag of that nation. As a consequence, both their existence and their action, which are wholly irregular, put them beyond the pale of international law, and their proceedings, which are hostile to the peaceful operations of commerce at the entrance of a commercial port belonging to a nation which is at peace

with the whole world, may in all cases be repressed by the vessels that are charged in those waters to watch over the interests of commerce in general, and over the special interests of the nations to which they respectively belong.

In informing you, Mr. Secretary of State, as I hereby have the honor to do, of the restoration of peace throughout almost the entire territory of Colombia, and of the measures adopted with a view to its restoration in the ports which are still held by the rebels, I entertain the hope that this information will be gratifying to you, and that the decrees in question will have, in your estimation, the weight necessary to cause them to be considered as important to American commerce.

I offer you, Mr. Secretary of State, the assurance of my highest consideration.

RICARDO BECERRA.

Hon. T. F. BAYARD,
Secretary of State of the United States.

To this note Mr. Bayard, on April 24, 1885, replied, denying in the first place the international validity of a closure of ports unsustained by an efficient blockade, and asserting in the second place that the "Government of the United States cannot regard as piratical vessels manned by parties in arms against the Government of the United States of Colombia, when such vessels are passing to and from ports held by such insurgents, or even when attacking ports in the possession of the National Government. In the late civil war," so Mr. Bayard's note proceeds to say, "the United States at an early period of the struggle surrendered the position that those manning the Confederate cruisers were pirates under international law. The United States of Colombia cannot, sooner or later, do otherwise than accept the same view. But however this may be, no neutral power can acquiesce in the position now taken by the Colombian Government. Whatever may be the demerits of the vessels in the power of the insurgents, or whatever may be the status of those manning them under the municipal laws of Colombia, if they be brought by the act of the National Government within the operation of that law, there can be no question that such vessels, when engaged as above stated, are not, by the law of nations, pirates; nor can they be regarded as pirates by the United States."

Both these positions are recognized in the following passage in the message of President Cleveland, sent to Congress on December 8, 1885:

"Pending these occurrences a question of much importance was presented by decrees of the Colombian Government, proclaiming the closure of certain ports then in the hands of the insurgents, and declaring vessels held by the revolutionists to be piratical and liable to capture by any power. To neither of these propositions could

the United States assent. An effective closure of ports not in the possession of the Government, but held by hostile partisans, could not be recognized; neither could the vessels of insurgents against the legitimate sovereignty be deemed *hostes humani generis* within the precepts of international law, whatever might be the definition and penalty of their acts under the municipal law of the State against whose authority they were in revolt. The denial by this Government of the Colombian propositions did not, however, imply the admission of a belligerent status on the part of the insurgents."

On April 24, 1885, the brigantine "Ambrose Light," carrying the Colombian flag, and claiming to be commissioned as a vessel of war by "Pedroa Lara, governor of the province of Baranquilla, in the United States of Colombia, with full powers conferred by the citizen president of the state," was seized by the United States gunboat "Alliance," about twenty miles to the westward of Cartagena, and was taken to New York for adjudication as a prize. The "Government" by whom the "Ambrose Light" was commissioned, while in possession of several important ports of Colombia, and blockading others, did not claim title under the titular Government of Colombia, acknowledged as such by the United States, but was organized by insurgents against that Government. On the hearing of the libel to procure the condemnation of the "Ambrose Light," the proofs showed, according to the report of the case given in the Federal Reporter of December 8, 1885, (1) "that she had been sold to, and legally belonged to, Colente, one of the chief military leaders of the insurgents at Baranquilla;" (2) that "none of her officers or crew were citizens of the United States;" (3) that she was engaged upon a hostile expedition against Cartagena, and designed to assist in the blockade and siege of that port by the rebels against the established government;" (4) that she was instructed to "fight any Colombian vessel not showing the white flag with a red cross;" (5) that "Sabanilla and a few other adjacent seaports in the province of Baranquilla, including the city of Baranquilla, had been for some months previous, and still were, under the control of the insurgents;" while (6) "the proofs did not show that any other depredations or hostilities were intended by the vessel than such as might be incident to the struggle between the insurgents and the Government of Colombia, and to the so-called blockade and siege of Cartagena."

It appears also that the correspondence between Mr. Becerra and Mr. Bayard was treated at the hearing as part of the evidence in the case. On this state of facts, Judge Brown, to adopt the statement in the carefully drawn headnotes given in the Federal Reporter, held that "in the absence of any recognition of rebel belligerency, or of an existing state of war in Colombia, either by that government or by any other nation, the rebel commission of their own vessel as a vessel of war was, in the eye of international

law, unauthorized and void; that the seizure of the vessel as piratical was technically authorized by the law of nations; but that the implied recognition of an existing state of war in the Secretary's letter of the same date prevented any condemnation of the vessel; but that as her seizure was lawful at the time, her release should be ordered on the payment of the disbursements of the proceeding."

It is not, however, with the decree so entered, but with the opinion on which it rests, that I have now to do; and I ask leave to criticise this opinion in your columns, because with an elaborateness and frankness to which I am glad to pay tribute, it takes issue with the action of an executive department of the Government in two important relations. It holds, in opposition to the note of the Secretary of State and the message of the President, that foreign insurgents when warring at sea against their titular sovereign, are to be arrested and punished by us as pirates; and it declares, contradicting herein the express statement of the Secretary of State, that the Colombian insurgents were recognized by the Secretary in April, 1885, as belligerents.

The first mistake, as I hold it, of Judge Brown arises from his failure to recognize the relation we sustain in international law to insurgents who a foreign sovereign informs us are in warfare against him. When we are notified, as we were in the present case, by a foreign sovereign that an armed insurrection is in existence within his domains, the fact is one of which we are bound to take notice. We cannot, it is true, give such insurgents hospitality in our ports; nor do we release their titular sovereign, as we would do in case we recognize their belligerency, from responsibility for their acts. But while such is the case, we respond to such an announcement by applying to him and to them the rule of nonintervention in foreign disturbances on which our whole system of extraterritorial policy rests. This distinction, however, I hold that Judge Brown does not grasp. We recognize foreign insurgency by refusing to send our military and naval forces to attack its armies or its fleets, and by refusing to deliver up those concerned in it when they take refuge on our shores.

We say in such cases to the titular government, whether it be despotic or liberal, "We cannot intervene to fight your battles, either on land or at sea; neither will we surrender political fugitives who have escaped from you to our ships or our shores." But a recognition of foreign belligerency is a very different thing. It is never determined on until an insurrection has obtained permanency, and stands on something like settled parity with the government it assails. Such a recognition is announced by a proclamation of neutrality, and is followed by placing insurgent and titular governments on the same terms of access to the ports of the sovereign by whom the proclamation has been issued. Hence, while in very many cases we have recognized foreign insurgencies, we have never recognized such insurgencies as belligerent until they have shown themselves,

by long and enduring exhibition of strength, to be on something like a parity with the State against which they revolt. The Government of the United States unquestionably recognized the insurgency of the forces arrayed in April last against the Colombian titular government. But it expressly declares that it did not recognize their belligerency; and the case of the "Ambrose Light" is, I apprehend, the first in our annals in which one of our judges, when advised that there was no such recognition, has decided that, notwithstanding such express announcement to him, belligerency was really recognized.

[Here follows a long discussion upon the definition of piracy.]

The conclusions I draw are as follows:

1. We ought not in cases of insurrection in foreign countries to acknowledge insurgents as belligerents until the insurrection establishes itself on such a basis of apparent permanency to put it at least for a time on an apparent parity with the parent state. When such a condition of things is manifest, then a proclamation of neutrality should be issued, and the insurgent vessels admitted to the same rights in our ports as are those of the Government which they assail.

2. We ought not, in any case, to interfere to suppress insurrections in foreign states by attacking either the land or the maritime forces of the insurgents. To do so would be to cast aside that policy of noninterference in foreign systems which we have heretofore followed with scrupulous conscientiousness, would render us in most cases the supporters of despotisms as atrocious as those of Yturbide, of Francia, or of King Bomba, and would when the interference was attempted on behalf of the weaker South American Governments throw such governments permanently on our hands, and thus subject us to burdens our system could not bear. To this policy of interference there should be but two exceptions. We should interfere to prevent any European power from effecting a new lodgment on this continent. We should interfere also on the isthmus, when necessary to carry out our treaty guaranty of free transit. But beyond this our interference cannot go. No matter how vehement may be the decrees of foreign governments declaring insurgents to be traitors and pirates, those decrees it should not be for us to execute.

FRANCIS WHARTON,
Solicitor for the Department of State.

K.

[President Cleveland's Proclamation, 1895.]

BY THE PRESIDENT OF THE UNITED STATES.

A PROCLAMATION.

Whereas the Island of Cuba is now the seat of serious civil disturbances accompanied by armed resistance to the authority of the

established government of Spain, a power with which the United States are and desire to remain on terms of peace and amity; and

Whereas the laws of the United States prohibit their citizens, as well as all others being within and subject to their jurisdiction, from taking part in such disturbances adversely to such established government by accepting or exercising commissions for warlike service against it, by enlistment, or procuring others to enlist for such service, by fitting out or arming or procuring to be fitted out and armed ships of war for such service, by augmenting the force of any ship of war engaged in such service and arriving in a port of the United States, and by setting on foot or providing or preparing the means for military enterprises to be carried on from the United States against the territory of such government.

Now, therefore, in recognition of the laws aforesaid and in discharge of the obligations of the United States towards a friendly power, and as a measure of precaution, and to the end that citizens of the United States and all others within their jurisdiction may be deterred from subjecting themselves to legal forfeitures and penalties:

I, Grover Cleveland, President of the United States of America, do hereby admonish all such citizens and other persons to abstain from every violation of the laws hereinbefore referred to, and do hereby warn them that all violations of such laws will be rigorously prosecuted; and I do hereby enjoin upon all officers of the United States charged with the execution of said laws the utmost diligence in preventing violations thereof and in bringing to trial and punishment any offenders against the same.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twelfth day of June in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and nineteenth.

[SEAL] GROVER CLEVELAND.

By the President:

RICHARD OLNEY,

Secretary of State.

L.

[President Cleveland's Proclamation, 1896.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, by a proclamation dated the twelfth day of June, A. D. 1895, attention was called to the serious civil disturbances accompanied by armed resistance to the established Government of Spain

then prevailing in the island of Cuba, and citizens of the United States and all other persons were admonished to abstain from taking part in such disturbances in contravention of the neutrality laws of the United States; and

Whereas, said civil disturbances and armed resistance to the authority of Spain, a power with which the United States are on terms of peace and amity, continue to prevail in said island of Cuba; and

Whereas, since the date of said proclamation said neutrality laws of the United States have been the subject of authoritative exposition by the judicial tribunal of last resort, and it has thus been declared that any combination of persons organized in the United States for the purpose of proceeding to and making war upon a foreign country with which the United States are at peace and provided with arms to be used for such purpose constitutes a "military expedition or enterprise" within the meaning of said neutrality laws, and that the providing or preparing of the means for such "military expedition or enterprise," which is expressly prohibited by said laws, includes furnishing or aiding in transportation for such "military expedition or enterprise; and

Whereas, by express enactment, if two or more persons conspire to commit an offense against the United States, any act of one conspirator to effect the object of such conspiracy renders all the conspirators liable to fine and imprisonment; and

Whereas there is reason to believe that citizens of the United States and others within their jurisdiction fail to apprehend the meaning and operation of the neutrality laws of the United States as authoritatively interpreted as aforesaid, and may be misled into participation in transactions which are violations of said laws and will render them liable to the severe penalties provided for such violations:

Now, therefore, that the laws above referred to as judicially construed may be duly executed, that the international obligations of the United States may be fully satisfied, and that their citizens and all others within their jurisdiction, being seasonably apprised of their legal duty in the premises, may abstain from disobedience to the laws of the United States and thereby escape the forfeitures and penalties legally consequent thereon;

I, Grover Cleveland, President of the United States, do hereby solemnly warn all citizens of the United States and all others within their jurisdiction against violations of the said laws interpreted as hereinbefore explained, and give notice that all such violations will be vigorously prosecuted. And I do hereby invoke the co-operation of all good citizens in the enforcement of said laws and in the detection and apprehension of any offenders against the same, and do hereby enjoin upon all the executive officers of the United States the utmost diligence in preventing, prosecuting, and punishing any infractions thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 27th day of July, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

[SEAL] GROVER CLEVELAND.

By the President:

RICHARD OLNEY,

Secretary of State.

M.

[President Cleveland's Annual Message, 1895.]

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Cuba is again gravely disturbed. An insurrection, in some respects more active than the last preceding revolt, which continued from 1868 to 1878, now exists in a large part of the eastern interior of the island, menacing even some populations on the coast. Besides deranging the commercial exchanges of the island, of which our country takes the predominant share, this flagrant condition of hostilities, by arousing sentimental sympathy and inciting adventurous support among our people, has entailed earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty.

Whatever may be the traditional sympathy of our countrymen as individuals with a people who seem to be struggling for larger autonomy and greater freedom, deepened as such sympathy naturally must be in behalf of our neighbors, yet the plain duty of their Government is to observe in good faith the recognized obligations of international relationship. The performance of this duty should not be made more difficult by a disregard on the part of our citizens of the obligations growing out of their allegiance to their country, which should restrain them from violating as individuals the neutrality which the nation of which they are members is bound to observe in its relations to friendly sovereign states. Though neither the warmth of our people's sympathy with the Cuban insurgents, nor our loss and material damage consequent upon the futile endeavors thus far made to restore peace and order, nor any shock our humane sensibilities may have received from the cruelties which appear to especially characterize this sanguinary and fiercely conducted war, have in the least shaken the determination of the Government to honestly fulfill every international obligation, yet it is to be earnestly hoped, on every ground, that the devastation of armed conflict may speedily be stayed and order and quiet restored

to the distracted island, bringing in their train the activity and thrift of peaceful pursuits.

One notable instance of interference by Spain with passing American ships has occurred. On March 8 last the "Allianca," while bound from Colon to New York, and following the customary track for vessels near the Cuban shore, but outside the three-mile limit, was fired upon by a Spanish gunboat. Protest was promptly made by the United States against this act as not being justified by a state of war, nor permissible in respect of vessels on the usual paths of commerce, nor tolerable in view of the wanton peril occasioned to innocent life and property. The act was disavowed, with full expression of regret, and assurance of nonrecurrence of such just cause of complaint, while the offending officer was relieved of his command.

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N.

[President Cleveland's Annual Message, 1896.]

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The insurrection in Cuba still continues with all its perplexities. It is difficult to perceive that any progress has thus far been made towards the pacification of the island or that the situation of affairs as depicted in my last annual message has in the least improved. If Spain still holds Habana and the seaports and all the considerable towns, the insurgents still roam at will over at least two-thirds of the inland country. If the determination of Spain to put down the insurrection seems but to strengthen with the lapse of time, and is evinced by her unhesitating devotion of largely increased military and naval forces to the task, there is much reason to believe that the insurgents have gained in point of numbers, and character, and resources, and are none the less inflexible in their resolve not to succumb, without practically securing the great objects for which they took up arms. If Spain has not yet re-established her authority, neither have the insurgents yet made good their title to be regarded as an independent state. Indeed, as the contest has gone on, the pretense that civil government exists on the island, except so far as Spain is able to maintain it, has been practically abandoned. Spain does keep on foot such a government, more or less imperfectly, in the large towns and their immediate suburbs. But, that exception being made, the entire country is either given over to anarchy or is subject to the military occupation of one or the other party. It is reported, indeed, on reliable authority that, at the demand of the commander-in-chief of the insurgent army, the putative Cuban government has now given up all attempt to exercise its functions, leaving that government confessedly (what there is the best reason for supposing it always to have been in fact) a government merely on paper.

Were the Spanish armies able to meet their antagonists in the open, or in pitched battle, prompt and decisive results might be looked for, and the immense superiority of the Spanish forces in numbers, discipline, and equipment could hardly fail to tell greatly to their advantage. But they are called upon to face a foe that shuns general engagements, that can choose and does choose its own ground, that from the nature of the country is visible or invisible at pleasure, and that fights only from ambuscade and when all the advantages of position and numbers are on its side. In a country where all that is indispensible to life in the way of food, clothing, and shelter is so easily obtainable, especially by those born and bred on the soil, it is obvious that there is hardly a limit to the time during which hostilities of this sort may be prolonged. Meanwhile, as in all cases of protracted civil strife, the passions of the combatants grow more and more inflamed and excesses on both sides become more frequent and more deplorable. They are also participated in by bands of marauders, who, now in the name of one party and now in the name of the other, as may best suit the occasion, harry the country at will and plunder its wretched inhabitants for their own advantage. Such a condition of things would inevitably entail immense destruction of property even if it were the policy of both parties to prevent it as far as practicable. But while such seemed to be the original policy of the Spanish Government, it has now apparently abandoned it and is acting upon the same theory as the insurgents, namely, that the exigencies of the contest require the wholesale annihilation of property, that it may not prove of use and advantage to the enemy.

It is to the same end that, in pursuance of general orders, Spanish garrisons are now being withdrawn from plantations and the rural population required to concentrate itself in the towns. The sure result would seem to be that the industrial value of the island is fast diminishing, and that unless there is a speedy and radical change in the existing conditions it will soon disappear altogether. That value consists very largely, of course, in its capacity to produce sugar—a capacity already much reduced by the interruptions to tillage which have taken place during the last two years. It is reliably asserted that should these interruptions continue during the current year and practically extend, as is now threatened, to the entire sugar-producing territory of the island, so much time and so much money will be required to restore the land to its normal productiveness that it is extremely doubtful if capital can be induced to even make the attempt.

The spectacle of the utter ruin of an adjoining country, by nature one of the most fertile and charming on the globe, would engage the serious attention of the Government and people of the United States in any circumstances. In point of fact, they have a concern with it which is by no means of a wholly sentimental or philanthropic character. It lies so near to us as to be hardly separated

from our territory. Our actual pecuniary interest in it is second only to that of the people and Government of Spain. It is reasonably estimated that at least from $30,000,000, to $50,000,000 of American capital are invested in plantations and in railroad, mining, and other business enterprises on the island. The volume of trade between the United States and Cuba, which in 1889 amounted to about $64,000,000, rose in 1893 to about $103,000,000, and in 1894, the year before the present insurrection broke out, amounted to nearly $96,000,000. Besides this large pecuniary stake in the fortunes of Cuba, the United States finds itself inextricably involved in the present contest in other ways both vexatious and costly.

Many Cubans reside in this country and indirectly promote the insurrection through the press, by public meetings, by the purchase and shipment of arms, by the raising of funds, and by other means, which the spirit of our institutions and the tenor of our laws do not permit to be made the subject of criminal prosecutions. Some of them, though Cubans at heart and in all their feelings and interests, have taken out papers as naturalized citizens of the United States, a proceeding resorted to with a view to possible protection by this Government, and not unnaturally regarded with much indignation by the country of their origin. The insurgents are undoubtedly encouraged and supported by the widespread sympathy the people of this country always and instinctively feel for every struggle for better and freer government, and which, in the case of the more adventurous and restless elements of our population, leads in only too many instances to active and personal participation in the contest. The result is that this Government is constantly called upon to protect American citizens, to claim damages for injuries to persons and property, now estimated at many millions of dollars, and to ask explanations and apologies for the acts of Spanish officials, whose zeal for the repression of rebellion sometimes blinds them to the immunities belonging to the unoffending citizens of a friendly power. It follows from the same causes that the United States is compelled to actively police a long line of sea coast against unlawful expeditions, the escape of which the utmost vigilance will not always suffice to prevent.

These inevitable entanglements of the United States with the rebellion in Cuba, the large American property interests affected, and considerations of philanthropy and humanity in general, have led to a vehement demand in various quarters for some sort of positive intervention on the part of the United States. It was at first proposed that belligerent rights should be accorded to the insurgents—a proposition no longer urged, because untimely and in practical operation clearly perilous and injurious to our own interests. It has since been and is now sometimes contended that the independence of the insurgents should be recognized. But imperfect and restricted as the Spanish Government of the island may be, no other

exists there—unless the will of the military officer in temporary command of a particular district can be dignified as a species of government. It is now also suggested that the United States should buy the island—a suggestion possibly worthy of consideration if there were any evidence of a desire or willingness on the part of Spain to entertain such a proposal. It is urged, finally, that, all other methods failing, the existing internecine strife in Cuba should be terminated by our intervention, even at the cost of a war between the United States and Spain—a war which it advocates confidently prophesy could be neither large in its proportions nor doubtful in its issue.

The correctness of this forecast need be neither affirmed nor denied. The United States has nevertheless a character to maintain as a nation, which plainly dictates that right and not might should be the rule of its conduct. Further, though the United States is not a nation to which peace is a necessity, it is in truth the most pacific of powers, and desires nothing so much as to live in amity with all the world. Its own ample and diversified domains satisfy all possible longings for territory, preclude all dreams of conquest, and prevent any castings of covetous eyes upon neighboring regions, however attractive. That our conduct towards Spain and her dominions has constituted no exception to this national disposition is made manifest by the course of our Government, not only thus far during the present insurrection, but during the ten years that followed the rising at Yara in 1868. No other great power, it may safely be said, under circumstances of similar perplexity, would have manifested the same restraint and the same patient endurance. It may also be said that this persistent attitude of the United States towards Spain in connection with Cuba unquestionably evinces no slight respect and regard for Spain on the part of the American people. They in truth do not forget her connection with the discovery of the Western Hemisphere, nor do they underestimate the great qualities of the Spanish people, nor fail to fully recognize their splendid patriotism and their chivalrous devotion to the national honor.

They view with wonder and admiration the cheerful resolution with which vast bodies of men are sent across thousands of miles of ocean, and an enormous debt accumulated, that the costly possession of the "Gem of the Antilles" may still hold its place in the Spanish Crown. And yet neither the Government nor the people of the United States have shut their eyes to the course of events in Cuba or have failed to realize the existence of conceded grievances which have led to the present revolt from the authority of Spain—grievances recognized by the Queen Regent and by the Cortes, voiced by the most patriotic and enlightened of Spanish statesmen without regard to party, and demonstrated by reforms proposed by the executive and approved by the legislative branch of the Spanish Government. It is in the assumed temper and disposition of the

Spanish Government to remedy these grievances, fortified by indications of influential public opinion in Spain, that this Government has hoped to discover the most promising and effective means of composing the present strife, with honor and advantage to Spain and with the achievement of all the reasonable objects of the insurrection.

It would seem that if Spain should offer to Cuba genuine autonomy—a measure of home rule which, while preserving the sovereignty of Spain, would satisfy all rational requirements of her Spanish subjects—there should be no just reason why the pacification of the island might not be effected on that basis. Such a result would appear to be in the true interest of all concerned. It would at once stop the conflict which is now consuming the resources of the island and making it worthless for whichever party may ultimately prevail. It would keep intact the possessions of Spain without touching her honor, which will be consulted rather than impugned by the adequated redress of admitted grievances. It would put the prosperity of the island and the fortunes of its inhabitants within their own control, without severing the natural and ancient ties which bind them to the mother country, and would yet enable them to test their capacity for self-government under the most favorable conditions. It has been objected on the one side that Spain should not promise autonomy until her insurgent subjects lay down their arms; on the other side, that promised autonomy, however liberal, is insufficient, because without assurance of the promise being fulfilled.

But the reasonableness of a requirement by Spain of unconditional surrender on the part of the insurgent Cubans before their autonomy is cenceded is not altogether apparent. It ignores important features of the situation—the stability that two years' duration has given to the insurrection; the feasability of its indefinite prolongation in the nature of things, and as shown by past experience; the utter and imminent ruin of the island, unless the present strife is speedily composed; above all, the rank abuses which all parties in Spain, all branches of her government, and all her leading public men concede to exist and profess a desire to remove. Facing such circumstances, to withhold the proffer of needed reforms until the parties demanding them put themselves at mercy by throwing down their arms, has the appearance of neglecting the gravest of perils and inviting suspicion as to the sincerity of any professed willingness to grant reforms. The objection on behalf of the insurgents—that promised reforms cannot be relied upon—must of course be considered, though we have no right to assume, and no reason for assuming, that anything Spain undertakes to do for the relief of Cuba with not be done according to both the spirit and the letter of the undertaking.

Nevertheless, realizing that suspicions and precautions on the

part of the weaker of two combatants are always natural and not always unjustiable—being sincerely desirous in the interest of both as well as on its own account that the Cuban problem should be solved with the least possible delay—it was intimated by this Government to the Government of Spain some months ago that if a satisfactory measure of home rule were tendered the Cuban insurgents, and would be accepted by them upon a guaranty of its execution, the United States would endeaver to find a way not objectionable to Spain of furnishing such guaranty. While no definite response to this intimation has yet been received from the Spanish Government, it is believed to be not altogether unwelcome, while, as already suggested, no reason is perceived why it should not be approved by the insurgents. Neither party can fail to see the importance of early action, and both must realize that to prolong the present state of things for even a short period will add enormously to the time and labor and expenditure necessary to bring about the industrial recuperation of the island. It is, therefore, fervently hoped on all grounds that earnest efforts for healing the breach between Spain and the insurgent Cubans, upon the lines above indicated, may be at once inaugurated and pushed to an immediate and successful issue. The friendly offices of the United States, either in the manner above outlined or in any other way consistent with our Constitution and laws, will always be at the disposal of either party.

Whatever circumstances may arise, our policy and our interests would constrain us to object to the acquisition of the island or an interference with its control by any other power.

It should be added that it cannot be reasonably assumed that the hitherto expectant attitude of the United States will be indefinitely maintained. While we are anxious to accord all due respect to the sovereignty of Spain, we cannot view the pending conflict in all its features, and properly apprehend our inevitably close relations to it, and its possible results, without considering that by the course of events we may be drawn into such an unusual and unprecedented condition as will fix a limit to our patient waiting for Spain to end the contest, either alone and in her own way or with our friendly co-operation.

When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its re-establishment has degenerated into a strife which means nothing more than the useless sacrifice of human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge. Deferring the choice of ways and methods until the

time for action arrives, we should make them depend upon the precise conditions then existing; and they should not be determined upon without giving careful heed to every consideration involving our honor and interest, or the international duty we owe to Spain. Until we face the contingencies suggested, or the situation is by other incidents imperatively changed, we should continue in the line of conduct heretofore pursued, thus in all circumstances exhibiting our obedience to the requirements of public law and our regard for the duty enjoined upon us by the position we occupy in the family of nations.

A contemplation of emergencies that may arise should plainly lead us to avoid their creation, either through a careless disregard of present duty or even an undue stimulation and ill-timed expression of feeling. But I have deemed it not amiss to remind the Congress that a time may arrive when a correct policy and care for our interests, as well as a regard for the interests of other nations and their citizens, joined by considerations of humanity and a desire to see a rich and fertile country, intimately related to us, saved from complete devastation, will constrain our Government to such action as will subserve the interests thus involved and at the same time promise to Cuba and its inhabitants an opportunity to enjoy the blessings of peace. . . .

The Libels, Opinions, and Sentences in the cases of United States *vs.* "Mary N. Hogan," United States *vs.* 140 Kegs of Gunpowder, United States *vs.* 214 Boxes of Arms, and United States *vs.* "City of Mexico," filed for the convenience of the Supreme Court, will be found in Appendix I, Part II, (*c*) pages 1–43, of this volume.

In the Supreme Court of the United States.

THE UNITED STATES
vs.
THE "THREE FRIENDS." } No. 701.

BRIEF OF W. HALLETT PHILLIPS FOR APPELLEE.

The libel filed by the United States in the district court for the southern district of Florida against the tugboat "Three Friends," alleges as cause of condemnation and forfeiture "That the said steamboat or steam vessel, the 'Three Friends,' was on, to wit, on the 23d day of May, A. D. 1896, furnished, fitted out, and armed with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain in the island of Cuba, with whom the United States are and were at that date at peace."

After exceptions had been filed by claimants and owners the libellant amended the libel, by the allegation, that the vessel was fitted out, etc., within the jurisdiction with intent that she should be employed "in the service of a certain people then engaged in armed resistance to the government of the King of Spain." It was also alleged that the vessel was to be employed in the service of a certain people, to wit, the insurgents in the island of Cuba, otherwise called the Cuban revolutionists.

It was also alleged that the vessel, after having been so furnished, fitted out, and armed, "being loaded with supplies and arms and munitions of war, and it, the said steam vessel, being then and there furnished, fitted out, and armed with one certain gun or guns, the exact number to the said attorney of the United States unknown, and with munitions of war thereof, with the intent then and there to be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain in the island of Cuba, and with the intent to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain in the island of Cuba, and who, on the said date and day last aforesaid, and being so furnished, fitted out, and armed as aforesaid, then and there aforesaid, from the navigable waters of the United States, to wit, from the St. Johns river, within the southern district of Florida, and within the jurisdiction of this court aforesaid, proceeded upon a voyage to the island of Cuba aforesaid with the intent aforesaid, contrary to the form of the statute in such case made and provided. And that by force and virtue of the acts

of Congress in such case made and provided, the said steamboat or steam vessel, her tackle, engines, machinery, apparel, and furniture, became and are forfeited to the use of the said United States."

The libel was filed under Section 5283, Revised Statutes, part of the neutrality laws, which is as follows:

"Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

Exceptions were filed to the libel on the ground that it failed to show that the "Three Friends" was fitted, etc., with the intent that said vessel should be employed in the service of a foreign prince or state, or of a colony, district, or people with whom the United States are at peace.

It did not show in the service of what foreign prince or state or colony or district or body politic the said vessel was so fitted out.

It failed to show that said vessel was armed or fitted out or furnished with intent to be employed in the service of any body politic recognized by or known to the United States as a body politic.

These exceptions were sustained, and it was ordered that libellants have permission to amend the libel, and if not so amended within ten days, the same stand dismissed. (Rec., p. 13.)

From this order, sustaining the exceptions to the libel entered January 18, 1897, the libellants, on the 23d day of January, appealed to the circuit court of appeals for the fifth circuit. (Rec., p. 16.)

The district judge, in a thoroughly considered opinion, says: "That every judicial decision, remark, or ruling where the question has been under consideration or examination appears to be in favor of the position taken by the claimants in the exceptions."

The court concludes that it was "the intention of Congress in such enactment to prevent recognized political powers from having vessels prepared for their service in the United States, but that it

was not the intention to extend such prohibition to vessels fitted out to be employed by individuals or private parties, however they might be designated, for piratical or other hostilities where no protection could be obtained by a commission from a recognized government. In such case they would be held liable under the section which provides for the fitting out of a military expedition, or if they were guilty of any piratical acts upon the high seas they would become liable under the laws for the punishment of such acts. It is considered that at the time of the amendment of 1818 this construction had been declared, and the language of the amendment was in no way intended to change such construction, but was only intended to apply to the new designation of political powers, the existence of which had been recognized as belligerents if not as independents, and who were entitled to the rights of neutrals; that the libel herein does not state such a case as is contemplated by the statute, in that it does not allege that said vessel has been fitted out with intent that she should be employed in the service of any foreign prince or state, or of any colony, district, or people recognized as such by the political power of the United States."

Afterwards, the libellants having amended the libel by the insertion of the words "in the service of a certain people, to wit, 'certain people then engaged in armed resistance to the Government of the King of Spain' in the island of Cuba," the court held that the objections had not been overcome and that the amendment was not material, "as it appears clearly that the word people is used in an individual and personal sense and not as an organized and recognized political power in any way corresponding to a state, prince, colony, or district."

The writ of *certiorari* has been awarded to bring the case here from the circuit court of appeals.

The ground upon which the district court based its decision was that the statute proceeded under was not violated, because Section 5283 of the Revised Statutes, which embraces the third section of the Act of April 20, 1818, and first section of Act of March 3, 1817, when it mentions the word "people" means "one of the denominations applied by the act of Congress to a foreign power. U. S. *vs.* Quincy, 6 Pet. 443.

The district court held that this term did not signify persons not engaged in public war, not recognized as constituting either an independent or a belligerent community; that the section was a neutrality provision; that no neutrality exists, as there had been no recognition by the United States of the belligerency of the contestants.

That the word "people," the only term which it is pretended covers the case, is only applicable to a foreign power or belligerent, is demonstrated by a reference to particular provisions of the Act of

1817, carried into the Act of 1818. This amended, as we have seen, the Act of 1794 so as to make it read:

"In the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities, or to aid or cooperate in any warlike measure whatever, against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace." Sec. 1, re-enacted in Sec. 5283, Rev. Stat.

The word any "people" must be used in the sense of any "power," because the statute refers to the "citizens or property of any people with whom the United States are at peace;" and there is a similar use of the word in each of the succeeding sections.

Thus Section 4, Act 1817, now Section 5286, Revised Statutes, which applies to the augmentation of force of any ship of war or armed vessel within the United States "in the service of any foreign prince or state or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, state, colony, district or people." 3 Stat. 370.

The provision applies only to neutrality, and can only operate where there is a recognized war, prosecuted by a power, whether such power be "a prince, state, colony, district, or people."

The term "any people" necessarily signifies in this connection a political entity, and not simply an unorganized number of individuals or persons.

The expressions "prince, state, or people" had a definite legal meaning at the time they were enacted in the legislation under review. Similar terms had been used in maritime policies of insurance and other instruments, from time immemorial, all the world over, and were well understood and defined. No head of jurisprudence was better settled than that appertaining to losses under such policies, by detention, "of all kings, princes, and people of what nation, condition, or quality soever" 2 Dane Abr. 113. In the authoritative work, Marshall on Insurance (1810), the author says that under these words, which are nearly the same in the policies of all the maritime countries, the insurers are liable for all losses occasioned by arrests or detention of the ship or goods insured by the authority of any prince "or public body claiming to exercise sovereign power under what pretense soever" B. 1, Oh. 12, Sec. 5. In the same section the author observes that the word "people" in the policy means a people or nation, not a mob. "By the word people in the policy is not to be understood any promiscuous or lawless rabble that may be guilty of attacking or detaining the ship; it means a people—that is, a nation in its collective and political capacity."

In Park Mar. Ins. (2 Am. ed. 1799) 78, it is said: "What the word people in this clause of a policy of insurance means has lately been judicially settled."

Nesbitt *vs.* Lushington, 4 T. R. 783, was decided in 1792. A ship was with force and violence attacked, arrested, and detained off the coast of Ireland by a concourse of lawless people for the purpose of compelling the captain to sell the corn he had on board at a certain price. The court decided that the loss was not within the meaning of the words arrests, etc., of kings, princess, and people.

Lord Kenyon said the word "people" meant the ruling power of the country. Mr. Justice Buller said it meant the supreme power of the country, whatever that might be; that the word people did not apply to individuals, but the words kings, princes, and people, of what nation, condition or quality soever, applied to "nations" in their collective capacity.

In Mauran *vs.* Insurance Company, 6 Wall. 12, this court confirms such construction, and dicusses its bearing upon our neutrality acts.

The case is of importance on account of the principles involved, and the decision was the result of great argument, participated in by Messrs. Cushing, R. H. Dana, Jr., and Horace Gray, Jr., now a member of this court, who appeared for the plaintiff in error.

The defendant in error was represented by Messrs. Curtis and Storrow.

The immediate question was, whether a seizure of a vessel by the so-called Confederate States constituted a capture within the meaning of the policy.

It was contended for the policy-holder that the insurers were bound to pay under the stipulation in the policy "against the adventures and perils of the sea, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people of what nation or quality soever."

It was argued that the loss did not arise in consequence of any capture, seizure, or detention within the meaning of the policy; that the taking by the Confederates did not operate in law as a capture.

Chancellor Kent was quoted to the effect that the stipulation of indemnity against takings at sea, arrests, restraints, and detainments of all kings, princes, and people, refers only to the acts of government for government purposes, whether right or wrong, 3 Com. 302, note D, 6th edition.

It was claimed that in whatever light such combinations of persons might be looked on by foreign powers, they must be regarded, as far as their cruisers are concerned, as pirates, in the courts of the United States.

On the other hand, it was argued that the court must take notice that a civil war existed between the United States and the so-called Confederate States; that the United States cannot, at the same time, insist that they have the belligerent rights which by the law of nations belong to a sovereign waging public war, and yet assert that there is no such public war as is known to the law of nations;

that the word "capture" is applicable to a seizure by a *de facto* government or persons acting under its authority.

This contention was sustained.

It was shown that such action by an organized government, recognized in our legislation as *de facto* under our policy, entitled the captor to the immunities derived from the recognition of war and belligerency.

Reference was made to the South American conflicts; "from the time the revolt had reached the dimensions of a civil war, the Government had recognized the war and conceded equal belligerent rights to the respective parties."

Other illustrations were made of governments *de facto*, which, for certain purposes, are recognized as if they were *de jure* and regularly constructed nationalities: "The court, in the case of Nesbitt *vs.* Lushington, 4 Term, 763, fitly described the character of the government contemplated in the clause respecting the restraints, etc., of kings, princes, or people, viz., 'the ruling power of the country,' 'the supreme power,' 'the power of the country, whatever it might be'—not necessarily a lawful power or government, or one that had been adopted into the family of nations."

The court concluded that the so-called Confederate Government, being in the possession of the supreme power of the district of country over which its jurisdiction extended, was a government *de facto*, which could make a capture within the meaning of the policy, Mauran *vs.* Insurance Co., 6 Wall. 12.

No reason exists why the word "people" should have one sense when used in a maritime policy, but a different sense as used in the statute. The one assures protection against the acts of such a "people," while the other prohibits acts done in its service.

It is an historical fact that the change in the wording of the Act of 1817 from that of 1794 was for the purpose of embracing movements instigated for the benefit of the South American provinces, then recognized belligerents.

In the case of the Santissima Trinidad, Chief Justice Marshall, on circuit, remarked as follows:

"However serious may be the doubt, whether a section of a nation struggling for its independence may come within the prohibitions of the act (1794), there can be no doubt that such a people come within the more ample provisions of the law of nations. Whether Buenos Ayrès be a state or not, if she is in a condition to make war and to claim the character and rights of a belligerent, she is bound to respect the laws of war; and the government which concedes her those rights is bound to maintain its own neutrality, unless it means to become a party to the war, as entirely as if she were an acknowledged state. She has no more right to recruit her navy within the United States than Spain would have, and this Government is as much bound to restrain her from using our strength in the war as to restrain her enemy." 1 Brock. 488; 7 Wheat. 283.

The meaning of the word "foreign prince or state" was announced in Gelston *vs.* Hoyt.

In that case the evidence was that the ship was fitted out and armed with intent that she should be employed in the service of that part of the island of San Domingo which was then under the government of Petion, to commit hostilities upon the subjects of that part of the island of San Domingo which was then under the government of Christophe.

The court held that neither of these allegations could be supported, inasmuch as the Government of the United States had never recognized either of these governments as "a foreign prince or state."

They had not been recognized either as belligerents or as independent communities. On the contrary, our Government had acknowledged they were parts of the French possessions, and had regulated, as requested by France, our trade therewith. 3 Wheat. 323.

In the Gran Para, 7 Wheat. 489, Chief Justice Marshall, discussing the two acts, says:

"The Act of 1817, chapter 58, adapts the previous law to the actual situation of the world by adding to the words 'of any foreign prince or state' the words 'or of any colony, district, or people,' etc."

There had been previous declarations that the words of the Act of 1794, "prince or state," did not embrace the South American countries then waging recognized civil war against Spain.

In the United States *vs.* Quincy, the indictment charged that the defendant was concerned in fitting out the ship with the intent that she should be employed in the service of a foreign people—that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence that those provinces had been regularly acknowledged as an independent nation by the Government of the United States. The argument was that the word people was not properly applicable to that nation or power. The court thus answered the objection:

"The word people, as here used, is merely descriptive of the power in whose service the vessel was intended to be employed, and it is one of the denominations applied by the act of Congress to a foreign power. The words are 'in the service of any foreign prince or state, or of any colony, district, or people.' The application of the word people is rendered sufficiently certain by what follows under the *videlicet*—'that is to say, the United Provinces of Rio de la Plata.' This particularizes that which by the word people is left too general. The descriptions are in no way repugnant or inconsistent with each other and may well stand together." 6 Pet. 467.

In United States *vs.* Palmer, the Circuit Court of the United States for the First Circuit, consisting of Judges Story and Davis, divided in opinion upon certain questions, which they certified here, arising

under the neutrality laws and the laws for the punishment of piracy. Some of these were as follows:

"5th. Whether any revolted colony, district, or people which have thrown off their allegiance to their mother country, but have never been acknowledged by the United States as a sovereign independent nation or power, have authority to issue commissions to make captures on the high seas of the persons, property, and vessels of the subjects of the mother country who retain their allegiance. . . .

"6th. Whether an act which would be deemed a robbery on the high seas, if done without a lawful commission, is protected from being considered as a robbery on the high seas when the same act is done under a commission or the color of a commission from any foreign colony, district, or people which have revolted from their native allegiance, and have declared themselves independent and sovereign, and have assumed to exercise the powers and authorities of an independent and sovereign government, but have never been acknowledged or recognized as an independent or sovereign government or nation by the United States or by any other foreign State, prince, or sovereignty.

"10th. Whether any colony, district, or people who have revolted from their native allegiance and have assumed upon themselves the exercise of independent and sovereign power can be deemed in any court in the United States an independent or sovereign nation or government until they have been acknowledged as such by the Government of the United States; and whether such acknowledgment can be proved in a court of the United States otherwise than by some act or statute or resolution of the Congress of the United States, or by some public proclamation or other public act of the executive authority of the United States directly containing or announcing such acknowledgment, or by publicly receiving and acknowledging an ambassador or other public minister from such colony, district, or people; and whether such acknowledgment can be proved by mere inference from the private acts or private instructions of the executive of the United States, when no public acknowledgment has ever been made, and whether the courts of the United States are bound judicially to take notice of the existing relations of the United States as to foreign States and sovereignties, their colonies and independencies.

"11th. Whether, in case of a civil war between a mother country and its colony, the subjects of the different parties are to be deemed, in respect to neutral nations, as enemies to each other, entitled to the rights of war." . . .

Chief Justice Marshall, March 14, 1818, delivering the opinion of the court, observed:

"The first four questions relate to the construction of the 8th section of the 'act for the punishment of certain crimes against the United States.' The remaining seven questions respect the rights

of a colony or other portion of an established empire which has proclaimed itself an independent nation and is asserting and maintaining its claim to independence by arms."

Both in this observation and in the question certified the word "people" is construed in the sense for which we are contending and no better definition of it can be made than that given by the chief justice. It applies to a foreign power or "the rights of part of a foreign empire which asserts and is contending for its independence."

No less significance is to be attached to this expression because the case finally went off on the question of the construction of the piracy act. It marks the meaning of the act by one who was a master of exposition.

The Chief Justice observes further that the rights of a colony or other portion of an established empire and the conduct "which must be observed by the courts of the Union toward the subjects of such section of an empire who may be brought before the tribunals of this country are equally delicate and difficult. . . . They belong more properly to those who can declare what the law shall be; who can place the nation in such a position with respect to foreign powers as, to their own judgment, shall appear wise; to whom are entrusted all its foreign relations, than to that tribunal whose power as well as duty is confined to the application of the rule which the legislature may prescribe for it. In such contests a nation may engage itself with the one party or the other; may observe absolute neutrality, may recognize the new state absolutely, or may make a limited recognition of it. It may be said generally, that if the Government remains neutral and recognizes the existence of a civil war, its courts cannot consider as criminal those acts hostility which war authorizes and which the new government may direct against its enemy. To decide otherwise would be to determine that the war prosecuted by one of the parties was unlawful, and would be to arraign the nation to which the court belongs against the party."

He concluded that persons or vessels employed in the service of "a self-declared government," acknowledged to be maintaining its separate existence by war, must be permitted to prove the fact of their being actually employed in such service by the same testimony which would be sufficient to prove that such vessel or person was employed in the service of an acknowledged State."

"Any colony, district, or people" are thus made to refer to a self-declared government or unrecognized state or portion of an established empire asserting its claim to independence by arms. U. S. *vs.* Palmer, 3 Wheat. 610.

That the provision we have been considering only applies to recognized public war and the duty of neutrality as towards foreign

powers and belligerents, clearly appears when we examine the history of this legislation, executive and legislative.

On December 26, 1816, the South American wars then raging, President Madison communicated to Congress the following message:

"It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties, and other unlawful acts on the high seas, by armed vessels equipped within the waters of the United States.

"With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped or in a course of equipment with a warlike force within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws and which the law of nations does not require the United States to prohibit." Annals of Cong., 14th Cong., 2d Sess., 1816–1817, p. 1079.

On January 1, 1817, Mr. Forsyth, the chairman of the Committee on Foreign Relations, afterwards Secretary of State, addressed a letter to Mr. Monroe, then Secretary of State, as follows:

"I am instructed by the Committee of Foreign Relations to inquire what information has been given to the Department of State of violations or intended violations of the neutral obligations of the United States to foreign powers by the arming and equipment of vessels of war in our ports; what prosecutions have been commenced under the existing laws to prevent the commission of such offenses; what persons prosecuted have been discharged, in consequence of the defects of the laws now in force, and the particular provisions that have been found insufficient or for the want of which persons deserving punishment have escaped." Annals of Cong., 14th Cong., 2d Sess., 1816–1817, p. 1080.

This letter was written in order to obtain the information requisite for the framing of the proper amendments to existing law, in pursuance to the President's message, which had been referred to the committee.

From the passages underscored it is seen that the mind of Congress and of the Executive was solely directed to prevent violation of the obligations of the United States as a neutral towards "belligerent parties," as mentioned in the message of the President, or "foreign powers," as mentioned in the letter of Mr. Forsyth.

The Secretary of State on January 10, 1817, communicated documents bearing on the inquiry of the Committee on Foreign Relations. Among these was a communication from the District Attorney of Louisiana giving "an enumeration of the cases in which individuals have been prosecuted for infringing or attempting to infringe our neutrality in aid of the governments of New Spain, and in which vessels have been seized and libelled under the Act of the 5th of June, 1794." (p. 1082).

On January 14, 1817, Mr. Forsyth, from the Committee on Foreign Relations, reported a bill defining our neutral obligations as to fitting out of cruisers more fully than had been done in the previous Act of 1794, but which still retained the words "prince or State." Annals of Cong., 14th Cong., 2d Sess., 1816–1817, p. 477.

The debate in the House on the bill for enforcing neutrality was extensive, and exhibits the clear understanding of Congress that the amendments were for the purpose of preventing aid to the South American provinces, then recognized belligerents, and that the provision as to the fitting out of vessels was intended solely to prevent such aid in this country to foreign powers at war as would violate our neutral obligations.

It was developed that strong pressure had been brought to bear upon our Government to strengthen the neutrality law in order to prevent the South American colonies from obtaining necessary aid here, and preventive measures were suggested by the Spanish minister.

The only objections to the bill were founded on the allegation that it went too far in the enforcement of our neutral obligations towords belligerents. It was, indeed, contended by Mr. Randolph that the doctrine of neutrality had no application to the case, because one party was not recognized by this Government as independent.

He was answered by Mr. Clay, who said:

"Whenever a war exists, whether between two independent States or between parts of a common empire, he knew of but two relations in which other powers could stand towards the belligerents. The one was that of neutrality and the other that of a belligerent. He hoped the gentleman from Virginia did not mean to contend (what would seem to be a consequence of his opinion) that we were a party to the war and an ally of Old Spain against her colonies.

"Being then in a state of neutrality repecting the contest and bound to maintain it, the question was whether the provisions of the bill were necessary to the performance of that duty.

. . . . . .

"Gentlemen have contended that this bill ought to be considered as intended merely to enforce our own laws—as a municipal regulation having no relation to the war now existing. It was impossible to

deceive ourselves as to the true character of the measure. Bestow on it what denomination you please, disguise it as you may, it is a law, and will be understood by the whole world as a law to discountenance any aid being given to the South American colonies in a state of revolution against the parent country." Annals of Cong., 14th Cong., 2d Sess., 1816–1817, pp. 741, 742.

In answer to Mr. Clay, Mr. Calhoun expressed in common with other gentlemen his good wishes for the cause of the South American colonies against the mother country, but that such wishes would never influence him to permit a violation of our neutral obligations.

He alluded to the nature of the contest existing in the Spanish provinces, acknowledged that its analogy to our own situation in 1776 enlisted our sympathies, but all that could be expected of us by the patriots was that we, being neutral, should do nothing to weaken their efforts or injure their cause.

On a later occasion he remarked that the law of 1794 had contemplated a war between two independent powers, not one between a mother country and its colonies; and if the defect of that law could not preserve our neutral character in the war now existing in the South he was willing to adopt the remedy. Annals, pp. 747, 752.

Mr. Lowndes said:

"The law of 1794, applying only to the case of war between two independent States, it ought, no doubt, to be extended to comprehend the contest referred to between Spain and her colonies, and not, when prosecutions are carried up to court for breaches of the law, deny that redress we profess to give. It appeared to him, by some inadvertence, however, the committee had not gone far enough in amending the Act of 1794, if it be amended so as to apply to governments not acknowledged to be independent," etc. Annals, p. 755.

The bill, as it passed the House, contained the words "colony, district or people," in addition to the words "prince or state." Annals, p. 768.

In this form it was adopted by the Senate and became a law, with an amendment not here material. Annals, p. 205.

The court will notice that the Act of March 3, 1817, 3 Stat. 370, is entitled, "An act more effectually to preserve the neutral relations of the United States." This act deals entirely with the fitting out or employment of armed cruisers of war.

Those amendments were urged upon our Government by Spain as necessary, in order to include the South American wars, "for the purpose of putting a stop to the armaments making in different parts of the Union, in violation of the law of nations and of the treaty existing between his Catholic Majesty and this Republic." Chevalier de Onis, Spanish Minister, to the Secretary of State, February 28, 1817.

Soon after the bill became the law of 1817, as early as March 15,

1817, the Secretary of State wrote to the Spanish minister, and by direction of the President inclosed a copy of the act "by which the President trusts that the Spanish Government will perceive a new proof on the part of the United States of a desire to cultivate friendly dispositions toward Spain." 4 Amer. State Papers, For. Relations 4, pp. 188, 189; 3 Whart. Int. Dig., Sec. 396, p. 560.

The declarations of the Executive show that from the beginning of the South American revolutions they had been recognized as belligerents by this country.

President Monroe, in 1817, sent a message to Congress in which he said:

"Through every stage of the conflict the United States have maintained an impartial neutrality, giving aid to neither of the parties in men, money, ships or munitions of war. They have regarded the contest not in the light of an ordinary insurrection or rebellion, but as a civil war between parties nearly equal having as to neutral powers equal rights."

In 1856 Mr. Gorostiza, the Mexican minister, complained to our Government that the Texans were being treated as belligerents, although he said the Texan movement "had not yet arrived at the point which those of the Spanish Americans had attained when the United States allowed them the same right."

He cites the principles announced by Mr. Monroe, in his message of March 8, 1822, in which he says:

"The United States has acknowledged the rights to which they (the Spanish provinces) were entitled by the law of nations, and as belligerents, so soon as their movement had assumed such a steady and consistent form as to render their ultimate success probable, and from that period they had been permitted to enter with their vessels of war into the ports of these United States," etc.

From this the minister inferred that until such movement had acquired such a steady and consistent form as to render probable the ultimate success of the said provinces in their struggle against Spain, the United States neither acknowledged their possession of any rights as belligerents nor admitted their vessels in the American ports.

He concludes there was a great interval between the commencement of the movement and the period at which it could have acquired the steadiness and consistency deemed requisite. Message of the President, H. R. Doc. 105, 24th Cong., 2d Sess., p. 136.

In answer to this communication the Secretary of State declined, in the name of the President, to allow the seizure of the Texan vessel or otherwise molest her. He said that such course "was in accordance with the principles in practice which have been invariably observed by this Government from the first breaking out of the revolution among the Spanish provinces on this continent to the present time."

It is obvious, he says, "that the exclusion of the vessel of the one

party from the ports of the United States and the admission of those of the other would be inconsistent with an impartial neutrality, and yet the President, in the same message from which Mr. Gorostiza has quoted, states that 'through the whole of this contest the United States have remained neutral, and have fulfilled with the utmost impartiality all the obligations incident to that character.' In a previous message of December 7, 1819, he observes, 'In the civil war existing between Spain and the Spanish provinces in this hemisphere the greatest care has been taken to enforce the laws intended to preserve an impartial neutrality. Our ports have continued to be equally open to both parties and on the same conditions.' This language plainly refers to the whole of the contest, and the President is not to be understood in his subsequent message, to which Mr. Gorostiza has referred, as intending to say that the vessels of either party were only permitted to enter the ports of the United States from the period when the success of such party appeared to be probable. The construction which Mr. Gorostiza has given to the particular passage he has cited is not only contradicted by other passages from the message of the same executive officer, but still more strongly, if possible, by the uniform acts of this Government in that and similar cases. It is a well-known fact that the vessels of the South American provinces were admitted into the ports of the United States under their own or other flags from the commencement of the revolution, and it is equally true that throughout the various civil contests that have taken place at different periods among the States that sprung from that revolution the vessels of each of the contending parties have been alike permitted to enter the ports of this country. It has never been held necessary, as a preliminary to the extension of the rights of hospitality to either, that the chances of the war should be balanced, and the probability of eventual success determined. • For this purpose it has been deemed sufficient that the party had declared its independence and at the time was actually maintaining it. . . . The exclusion of the vessels of Texas while those of Mexico are admitted is not deemed compatible with the strict neutrality which it is the desire and the determination of this Government to observe in respect to the present contest between those countries." H. R. Doc. 105, 24th Cong., 2d Sess., 141, Sept. 30, 1836 ; 1 Int. Law Dig., Sec. 69, p. 509.

The declarations of the department charged with our foreign relations, state the historical fact upon which the legislation now under review is largely dependent, and which was the inspiration for its enactment.

Such was the actual condition of the foreign relations of this country when the neutrality act was amended, in 1817, as to armed cruisers, by inserting words which would cover every form of recognized war then being waged by colonies or dependencies for independence. Every such contest was covered and described, either

by the words a prince, a state, a colony, a district, or a people each of these expressions being used to designate some *de facto* power or belligerent.

Between such contestants our Government declared it would enforce neutrality and would allow neither to fit out war vessels in our ports.

It is not strange that Congress should not have contemplated an enforcement of a neutrality provision except in a case where there were belligerents. It could not suppose that ships of war would be fitted out in our ports when there was no recognized war, or that our Government would support a fiction by refusing to recognize a state of war and yet enforce measures only applicable to such a state.

It was natural to assume that if a civil war should ever break out on the American continent the United States would recognize it as such and place both parties on an equal level as regards the enforcement of neutrality.

In the "Santissima Trinidad," 7 Wheat. 337, the policy of the United States is thus declared:

"The Government of the United States has recognized the existence of a civil war between Spain and her colonies and has avowed her determinatiou to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war."

The enforcement of neutrality, in so far as we have been considering it, has been in accordance with these views.

In the case of Texas, its belligerency was recognized from the time the declaration of independence was announced, which was contemporaneous with the outbreak of the revolution.

That the provision regarding arming and fitting out cruisers in our ports, as originally enacted in 1794, had in view only restrictions of neutrality and applied to belligerent powers alone cannot be doubted.

This provision was directed against the practices of Genet, acting on behalf of the French Government in the wars then raging in Europe.

Its origin is clearly traced:

"The practice of commissioning, equipping, and manning vessels in our ports to cruise on any of the belligerent parties is equally and entirely disapproved, and the Government will take effectual measures to prevent a repetition of it." 3 Jeff. Works, 105; 4 do., 34.

The keynote to this legislation is found in President Washington's Message, December 3, 1793, in which he says:

"The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military services, offensive or defensive, is deemed unlawful."

Mr. Wharton treats the provision under the head of "Issuing of belligerent cruisers," and the proposition which he announces as

the result of the legislation is that the United States is "bound to restrain fitting out and sailing of armed cruisers of belligerents." 3 Wharton's Int. Law Dig., Sec. 396, p. 551.

In an opinion delivered in 1841, Mr. Legare declares "the object of the Act of 1818 (same in Act of 1817) was to prevent all equipping of vessels of war in our ports for a foreign power actually engaged in hostilities with a nation with which the United States are at peace, knowing the purposes for which they are to be employed. 3 Op. Atty. Gen. 738.

But reliance is placed, as we understand, upon the proclamations of the President during the present disturbances in Cuba as making the "insurrection sufficiently notorious and extensive to have received the attention of the Government of this country for nearly two years past, although the insurgents have not received any recognition of belligerency."

These proclamations do not lend countenance to the present position of the Government, for they do not recognize a public war existing in Cuba, much less a government or new power asserting its sovereignty.

The first proclamation of President Cleveland, June 12, 1895, mentions that "the island of Cuba is now the seat of serious civil disturbances, accompanied by armed resistance to the authority of the established government of Spain."

Citizens of the United States are enjoined from taking part in such "disturbances."

The second proclamation, July 27, 1896, mentions that "civil disturbances and armed resistance to the established government of Spain continue to prevail in said island of Cuba."

This proclamation is solely concerned with the enforcement of Section 5286, Revised Statutes, regulating military expeditions, and refers to the decision of this court in the case of United States *vs.* Wiborg, *supra.*

"Civil disturbances" which may proceed from brigandage or factions can hardly be deemed the equivalent of a public war, or to constitute those participating in them "a people," in view of the construction placed upon this expression in the judicial and political declarations of this country.

If the argument of appellant is correct, there results a condition opposed to the very conception of neutrality, for the courts would be obliged to say that those causing civil disturbances constitute "a people" for the purpose of punishment under the act, and yet would be obliged to deny to them their standing as such under the neutrality laws, because the political departments of the Government have not recognized their belligerency or political existence.

Spain would obtain all the advantages of neutrality without incurring any of its obligations; it would be the enforcement of a simulated neutrality, a neutrality in name only, as it would be entirely in her favor.

It would enable Spain to proceed against those opposing her in Cuba as engaged in civil commotion only, while calling upon this nation to assist her by enforcing a neutrality provision applying to public war waged by a belligerent.

This expression, "any people," cannot be dissociated from the terms which precede it—any foreign prince or State, or any colony or district.

In the language of Lord Kenyon in Nesbitt *vs.* Lushington, *supra*, "the meaning of the word 'people' may be discovered here by the accompanying words, *noscitur a sociis*. It means the 'ruling power of the country."

It would be strange, in the light of history, if all the other terms refer to the people in their collective and political capacity, a body politic or assuming to be a body politic, while this expression, "a people" may be construed to refer in another sense to persons in their individual capacity.

The court can hardly treat the expressions in the President's messages as a political declaration of the existence of a colony, a district, or a people at war with Spain, and how can the insurgents be declared by the court to constitute "a people" without some such declaration?

If the proclamations can be resorted to by courts as evidence of a status possessed by the insurgents, for one purpose, they must be equally available as establishing such status for all purposes of neutrality. It would not be fair to hold that these documents contain a sufficient declaration of the existence "of a people" for the purpose of punishing those who act here in their service, but not sufficient to constitute "a people" entitled to the rights of neutrality under our laws. The court will not close its eyes and open them again to suit the pleasure of the Government for the time being.

The Government places much reliance upon the opinion of Attorney General Hoar as to the construction of the neutrality clause in question.

This opinion is thus stated by Mr. Wharton:

"The neutrality act of 1818 is not restricted in its operation to cases of war between two nations or where both parties to a contest have been recognized as belligerents—that is, as having a sufficiently organized political existence to enable them to carry on war. It would extend to the fitting out and arming of vessels for a revolted colony whose belligerency had not been recognized, but it should not be applied to the fitting out, etc., of vessels for the parent State for use against a revolted colony whose independence had not in any manner been recognized by our Government. 3 Whart. Int. Law Dig., Sec. 402, p. 628.

The question before the Attorney General was different from the one now presented to the court.

The point submitted was whether proceedings could be taken

under the act against Spanish vessels fitted out in this country, on the ground that they were procured to be fitted out and armed with intent that they should be employed in the service of Spain, a foreign State, with intent to cruise or commit hostilities against the subjects, citizens, or property of a "colony, district, or people" with whom the United States were at peace, namely, a "colony, district, or people" claiming to be the Republic of Cuba. It was held that in the absence of any political recognition of such a State the courts must conform to the action of the Government.

It was further held that Spain could not be said to commit hostilities against any party by procuring armed vessels for the purpose of enforcing its own recognized authority within its own dominions.

Here is an admission that the hostilities were not against "a people."

The attention of the Attorney General was called to the fact that libels had been filed to procure the condemnation of vessels on the ground that they were being fitted out and armed with intent to be employed in the service of a "colony, district, or people," viz., the "colony, district, or people of Cuba," and it was argued that as the Government in those libels had asserted that Cuba was a "colony, district, or people" capable of committing hostilities against Spain, the law equally applied to an armament procured or fitted out by Spain for the purpose of hostilities against Cuba.

This proposition the Attorney General denied.

We do not feel called upon to enter into the question of the soundness of the opinion.

In the present case there is no allegation that Cuba as a "colony, district, or people" has arisen against Spain.

The case before the Attorney General involved the assertion of a pretended government claiming to be the Republic of Cuba, and therefore might well be said to come within the act as a "colony, district, or people."

The argument of inconvenience is made.

It is said that if, under the present condition of affairs, proceedings cannot be had against vessels under Section 5283, there is no penalty provided by law. This argument, as remarked in the court below, was as applicable under the original Act of 1794, as it is now, under the Act of 1818, re-enacted in Section 5283, Revised Statutes.

Under the first act it was held, as we have seen, that the words "foreign prince or state" did not embrace sections of an empire not recognized by the United States.

In order to cover such cases, Congress resorted to additional legislation.

It was not supposed that the courts by any argument *ab inconvenienti* could so stretch the act as to cover such cases.

The result, as we have shown, was the Act of 1817, which added words to cover sections of an empire which had separated, or were endeavoring to separate, from the mother country.

There are ample provisions of municipal law to punish those who set on foot enterprises for the purpose of committing hostilities against a power with which we are at peace.

Section 6 of the Act of 1818 (3 Stat. 448), re-enacted in Section 5286, Revised Statutes, prohibits military enterprises to be carried on from "thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace."

This section provides fully for offenses against the peace of a foreign State, including enlistments.

It applies as well in times of peace as in times of war. There is no requirement that the expedition or enterprise should be in the service of any government or "people."

It is only necessary that it should be directed against the territory or dominions of a "people."

This use of the words "any people" conclusively shows that in the sense of Congress it meant a power exercising or asserting dominion, and is therefore of great significance in the argument.

Under this clause no forfeiture is provided.

For any offenses committed at sea amounting to piracy under our laws, those laws provide ample penalties.

But if at any time Spain should think it necessary for this country to enforce its law regarding the fitting out of belligerent cruisers, the remedy is in her own hands; she has but to recognize a state of war.

The Act of April 20, 1818 (3 Stat. 448), is entitled "An act in addition to the act for the punishment of certain crimes against the United States and to repeal the acts therein mentioned."

This act contains the provisions regarding military enterprises and other operations directed against foreign powers.

It embraces criminal legislation of a purely domestic character, and also re-enacts the former laws affecting our neutral relations.

The United States *vs.* Wiborg, 163 U. S. 632, involved the construction of what constituted an expedition or enterprise under Section 5286, Revised Statutes. This question has no immediate bearing on the case now under consideration.

No argument can properly be made on the ground that the United States has any duties to perform other than those specified in its legislation, or that citizens can be proceeded against criminally except as there provided.

This has always been determined by our Government.

Neither the United States nor Spain admits there exists a state of belligerency, and in its absence there cannot exist any obligations of neutrality.

In preparing the Foreign Enlistment Act of 1819, taken from our act, Parliament added to the language of our statute, "or part of any province or people or of any person exercising or assuming to exercise any powers of government in or over any foreign state,

colony, province or parts of any province, or people." 59 George III, C. 69, 7.

This additional language was undoubtedly inserted in view of the pronounced object of the language of the amendatory acts of 1817, 1818, as applying only to an empire or sections of an empire, and in view, also, of the construction of the word "people" by our decisions and in the light of the English case of Nesbitt *vs.* Lushington, *supra*, defining the meaning of the same expressions.

So entirely sufficient was the provision regarding hostile expeditions supposed to be that it was not until 1870 that Parliament, in view of the Alabama controversy, passed an act covering the fitting out of belligerent cruisers.

If we examine the modern judicial precedents in this country, in which the point has been debated, we will not find any opposition to the construction for which we contend, but much to support it.

They are fully set forth in the opinion of the court below, and need not be here largely discussed.

In United States *vs.* Wiborg, this court, speaking through Mr. Chief Justice Fuller, say:

"Section 5283 deals with fitting out and arming vessels in this country in favor of one foreign power as against another foreign power with which we are at peace." 163 U. S. 632.

In the case of the "Itata," in some respects similar to the present controversy, the district court of the United States for the district of California, in an opinion, said as follows:

"Prior to the passage of the act of April 20, 1818, the Supreme Court of the United States, in the case of Gelston *vs.* Hoyt, 3 Wheat. 245, speaking through Mr. Justice Story, held that Section 3 of the Act of 1794, prohibiting the fitting out any ship, etc., for the service of 'any foreign prince or state,' to cruise against the subjects, etc., of any foreign prince or state with which the United States were at peace, did not apply to any new government unless it had been recognized by the United States or by the government of the country to which such new country belonged, and that a plea which set up a forfeiture under that act, in fitting out a ship to cruise against such new state, must aver such recognition, or it is bad.

"Congress, in passing the subsequent Act of April 20, 1818, by which the provision referred to of the Act of 1794 was, in substance, re-enacted, must be presumed to have known the construction that had been theretofore put by the Supreme Court upon the words 'prince or state' in the Act of 1794, and with that knowledge in passing the Act of 1818 inserted in the same clause the words 'colony, district, or people.' This was done, according to Dana's Wheaton, Sec. 439, note 215, and Wharton's Int. Dig., p. 561, upon the suggestion of the Spanish minister that the South American provinces then in revolt and not recognized as independent might not be included in the word 'state.' But in every one of those instances the United States had acknowledged the existence of a state

of war and, as a consequence, the belligerent rights of the provinces." (48 Fed. Rep. 99.)

At October term, 1892, the Government filed an elaborate brief in support of a petition for a *certiorari* to bring up this decision, but it was denied without prejudice to a renewal.

After the refusal of the motion the circuit court of appeals for the seventh circuit affirmed the decree of the district court. The "Itata," 56 Fed. Rep. 505.

The court reviewed fully the authorities which had been cited in the district court, and supplied others in support of the position that the word "people" only applied to a power, government, or belligerent. As the decision, however, was placed on the ground that no fitting out had been established, it was not deemed necessary to decide the question as to the application of the statute. There is no doubt, however, as to the inclination of the court.

Attention was called to the fact that the English act was much broader than ours.

No further attempt was made by the Government to obtain a review of either of these decisions.

President Harrison was of opinion that the matter was a proper one to call to the attention of the legislature. In his message, December 9, 1891, he said:

"A trial in the district court of the United States for the southern district of California has recently resulted in a decision holding, among other things, that, inasmuch as the congressional party had not been recognized as a belligerent, the acts done in its interest could not be a violation of our neutrality laws. From this judgment the United States has appealed, not that the condemnation of the vessel is a matter of importance, but that we may know what the present state of our law is, for, if this construction of the statute is correct, there is obvious necessity for revision and amendment."

There have been several cases decided in the district courts involving the condemnation of vessels where the question as to the application of the statute was not raised or discussed by the court. U. S. *vs.* "Mary N. Hogan;" Brown, Justice, 18 Fed. Rep. 528; U. S. *vs.* 214 Boxes, etc., 20 Fed. Rep. 50; The "City of Mexico," 28 Fed. Rep. 148.

The same judge who decided the first case also decided that of the "Carondelet," 37 Fed. Rep. 800.

There the question was much discussed, and although the libel was dismissed on a different ground, the judge leaves no doubt as to his views. The question was whether a vessel entering the service of the faction under Hippolyte, in Hayti, which had not been recognized, could be said "to enter the service of a foreign prince or state, or of a colony, district, or people, unless our Government had recognized Hippolyte's faction as at least constituting a belligerent, which it does not appear to have done."

The judge remarked that the statute was a highly criminal and

penal one; that it was not to be enlarged by construction beyond the fair import of its terms.

In United States *vs.* Hart, the same judge said:

"Section 5283 deals with armed cruisers, designed to commit hostilities in favor of one foreign power as against another foreign power with whom we are at peace." 74 Fed. Rep. 724.

In the case of the "Conserva," 38 Fed. Rep. 432, Judge Benedict held that the language of Section 5283, Revised Statutes, as to the commission of hostilities against the subjects, citizens, or property of a foreign prince or people, did not include factions engaged in insurrection who were not recognized by the United States as belligerents.

The question was whether the section applied, as neither Hippolyte nor Legitime, who were struggling for supremacy in Hayti, had been recognized by our Government as belligerent powers.

"In the absence of proof of that fact, the fitting out of a vessel with intent to enter the service of one to commit hostilities against the other is not brought within the scope of the statute."

Since the preparation of the above we have received the proofs of the Government's argument, but too late to make any extended reply thereto.

We believe, however, that we have covered or endeavored to cover the question arising on the record, by what we have already said.

The Attorney General states the case as bringing up the question "whether the words 'colony, district, or people' include insurrectionary bodies like the present 'Republic of Cuba,' whose belligerency, technically speaking, has not yet been recognized by the executive department of our Government."

We deny that any such question is presented by the record or can arise even if resort is had to the various official documents relied on as supplying the omissions of the libel. No such body as the "Republic of Cuba" is anywhere referred to, and the statement of the Attorney General is the first announcement of the existence of a Republic of Cuba yet made by any responsible officer of the Government.

This suggestion, unsupported by the record, is designedly made for the purpose of creating the belief that somewhere it has been stated that "certain people" or "insurgents," as stated in the libel, constituted or claimed to constitute the "Republic of Cuba."

If such was the fact a different question would be presented from that now before the court—the case of a government, or community claiming to be a government, whether right or wrong.

In such a case argument might be admissible in support of the position that such a body or government might properly be deemed "a people."

As to the reference to "the recognition of belligerency, techni-

cally speaking," repeated throughout the brief, we are unable to understand what is meant.

Belligerency is simply a state of war, and must be recognized as such or not recognized at all.

If it is not recognized it is because the neutral power does not care to do so or because the movement has not attained the proportions of war.

Nor can there be any mistake as to the meaning of neutrality, which is inseparable from a belligerency to which the neutral is not a party.

Neutrality is a status clearly defined in law, and can only arise where there is war recognized as such.

It is simply creating confusion to speak about "a recognition of insurgency" as distinguished from a recognition of belligerency.

The words "insurgents" or "revolutionists" have no legal meaning; when they are recognized by a neutral government such recognition amounts to an admission of their belligerency or independence.

But so important is it to the case of the Government that they should show an organized community or power corresponding to the word "a people" that, after referring to the "present Republic of Cuba," whose existence for the first time is here avowed, reference is afterwards made to the "Cuban insurrectionary body." Here again we have an effort to supply the defective statements of the record so as to show a governmental organization or political entity.

As to such a "body" it is said that if the allegations of the libel are not sufficient, which state that the persons or insurgents constituted "a people," the decree should be reversed, because such body might have been described in the libel as a "colony or district." The answer to this is that no such question is now presented. There was no such allegation in the libel nor was the court below requested to allow any such amendment.

All the court here now can do is to decide whether, on the record presented and the charges in the libel, the court below was justified in sustaining the exceptions.

The case is one of a quasi-criminal nature, involving the forfeiture of property as a punishment for a criminal offense.

In such a case the rules of orderly procedure and adherence to law must be firmly pursued.

It is said that the history of the act tends to show "that it was intended to cover every revolutionary body, recognized or unrecognized, which made *bona fide* claims to rights of sovereignty."

But where is it shown in this record that there exists "a revolutionary body claiming the rights of sovereignty?"

Reference is made to the Act of March 10, 1838, Ch. 31, which expired in two years. This is mentioned as a "neutrality act," and

it is said that the words "colony, district, or people" were regarded as sufficient for the case.

The fact is that the act was one of domestic legislation and not at all one of neutrality. It was aimed at certain crimes and disturbances of the peace, then threatening on the Canadian border. The words "colony, district, or people" are only used when it is provided that the disturbance by our citizens of the peace of such countries should constitute a crime entailing certain forfeitures.

We submit that the court below properly sustained the exceptions to the libel.

W. HALLETT PHILLIPS,
For Appellees.

In the Supreme Court of the United States. October Term, 1896.

THE UNITED STATES, Appellant,
vs.
THE STEAMSHIP "THREE FRIENDS," HER BOATS, TACKLE, ENGINES, ETC. } No. 701.

BRIEF FOR APPELLEE.

The libel, the alleged dismissal of which is assigned as error here, is based on Section 5283 of the Revised Statutes, to wit:

"Every person who, within the limits of the United States, fits out and arm, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property, of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building or equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

The first ground of exception thereto:

"1. Section 5283, for an alleged violation of which the said vessel is sought to be forfeited, makes such forfeiture dependent upon the conviction of a person for doing the act or acts denounced in the first sentence of said section, and as a consequence of conviction of such person; whereas the allegations in said libel do not show

what persons had been guilty of the acts therein denounced as unlawful."

The issue raised on this exception requires a definite construction of the last sentence in the section:

"And every such vessel, her tackle, apparel, and furniture, together with all material, arms, ammunition, and stores which may have been procured for the building or equipment thereof, shall be forfeited," etc.

It is clear from the conjunction "and," which begins the sentence, that forfeiture is predicated of and upon the vessel described in the preceeding sentence, and, only, of and upon the vessel, and, only, of and upon the circumstances, acts and conduct, therein postulated.

What is meant by the words "every such vessel?"

The contention below of the Government was, that entirely distinct proceedings, in distinct forums, governed by entirely different rules of evidence, requiring an entirely distinct degree of proof, prevailed, in the proceedings by which the offending persons were to be ascertained and punished, from those which prevailed, under proceedings to condemn the offending thing, the vessel, to forfeiture.

The proposition underlying this contention is too elusive to be analyzed.

The issue raised by this exception does not concern the form of proceeding nor the degree of proof required. The simple question is, what must be alleged in the libel to bring the forfeiture denounced within the provisions of Section 5283?

The statute is penal. And the Government, in enforcing it, cannot eliminate a single fact or circumstance required by the statute to make out the forfeiture therein denounced.

If it be that the libel may dispense with the allegation required to be proven of a single act therein prescribed, it may dispense with another.

What constitutes the elements making up the offense condemning the vessel to forfeiture, it is for the legislature to determine.

The court possesses no dispensing power.

Now, of what acts or facts, circumstances and conduct, is forfeiture predicated?

Certainly not of the mere act of arming, etc., a vessel.

The act of arming, etc., a vessel is punishable only when the act of arming, etc., done as therein provided, is accompanied by the intent, imputed to the person or persons therein specified, of doing the thing therein provided against. Is it not idle to say that the vessel may be forfeited under this statute for the acts or doings therein specified, dissociated from the intent therein imputed to the persons therein specified? If it be that the acts and doings therein specified must be accompanied with the intent therein specified before persons can be punished thereunder, it follows the vessel cannot be condemned to forfeiture otherwise than upon allegations and

proof showing those acts and doings and allegations and proof showing the intent therein denounced with which they were committed.

Under any other construction a vessel may be condemned to forfeiture upon allegations and proof short of those required to punish the offending persons. Whereas, the plain, imperative, unambiguous language of the statute, is "And every such vessel," etc.; that is, a vessel in respect of which these acts and doings have been committed; a vessel, in respect of the arming of which, this intent existed; and equally and alike a vessel in respect of which the intent of the offending persons therein denounced has been ascertained by their conviction thereof.

Condemnation to forfeiture is not, by the law-making power, predicated of any other vessel, than such vessel. Forfeiture is denounced against a vessel so fitted out and armed, with the intent therein specified by the offending persons so fitting her out; and of which acts and doings with such intent, the offending persons have been convicted; and forfeiture is denounced against no other than "such" vessel.

In seeking under this libel to make a case of forfeiture independently of and without reference to the ascertained guilt of the offending persons, the Government insists that the vessel identified by the statute as such vessel means the vessel so fitted out and armed with the intent denounced, but not a vessel in respect of whose fitting out and arming offending persons have been convicted; because, speaking through the learned district attorney, it said, and was logically forced to say, the vessel may be liable to condemnation under this statute, and the offending persons acquitted.

In support of this unnatural, forced construction, reliance is had on "Ambrose Light," 25 Fed. Rep. 415.

This was a proceeding *in rem*, a prize case. It was held that 'the condemnation of a vessel as piratical does not imply a criminal liability of her officers and crew."

Not a Case of Prize.

So far from being a case of prize, the proceeding against the "Three Friends" is based on one and the same section which makes the criminal intent of the offending persons an essential ingredient of their conviction, and an essential ingredient of the forfeiture of the vessel.

And so it is, while "as regards acts that constitute undoubted piracy, there may be valid personal defense of the officers and crew," as suggested by Marshall, Ch. J., in U. S. *vs.* Klintock, 5 Wheat. 144–149, there can be, under Section 5283, no forfeiture of the vessel divorced from the criminal intent of the offending persons.

Nor does the case of the "Palmyra," 12 Wheat. 1, in its reasoning or conclusion furnish support to the contention of the Govern-

ment, that the vessel may be condemned, and the offending persons acquitted, under Section 5283. This was a case of seizure under the Piracy Act of March 3, 1819, continued in force by the Act of May 15, 1820.

Recurring to the statute, construed in the "Palmyra" and contrasting it with Section 5283, it is obvious the reasoning employed by Story, Justice, is wholly inapplicable to the language and intent of Congress, in enacting Section 5283. The one denounces an act of piratical aggression done or attempted; and forfeiture is pronounced upon the guilty thing—the instrument of this act of piratical aggression thus done or attempted. The other concerns itself solely with a criminal intent on the part of the offending persons; no act of hostile aggression, done or attempted, is made a constituent of the offense denounced. In the "Palmyra" case, it was held that whether a previous conviction of the offending person was a necessary basis for the proceeding *in rem*, under the statute then applied, is "of a far more important and difficult nature." The doctrine announced, that the proceeding *in rem* was wholly independent of the proceeding *in personam*, was adjudged to be "deduced from a fair interpretation of the legislative intention apparent upon its enactment." And, inasmuch as there was "no Act of Congress which provides for the personal punishment of offenders, who commit the piratical aggression," etc., "within the meaning of those acts," the construction contended for, going as it did "wholly to defeat their operation and violate their plain import" was held "utterly inadmissible." And the necessary conclusion reached by this reasoning was that "no personal conviction of the offender is necessary to a forfeiture *in rem* in cases of this nature."

In the case of the "Meteor," 17 Fed. Cases, 181, Betts, District Judge, held, upon an elaborate review of the authorities, that a prior conviction of the offender need not precede a condemnation of the vessel. It is submitted his reasoning, applied as it was to the section discussed, upon a consideration of the authorities cited, will not bear the test of a close analysis. On the contrary, it conducts us to the opposite conclusion.

In each of the cases cited the proceeding was *in rem* and the forfeiture denounced was predicated upon acts, not upon intent; in each, the condemnation of the vessel was based upon the act done by the vessel as the guilty instrument, irrespective of the claimant's intent. That there are many cases in which the ship becomes forfeited by the acts of the master, and that the owner impliedly submits to involve his vessel in whatever unlawful or wanton acts may be committed by those in charge of her, is not only conceded but affirmed. But this responsibility is enforced, and the ship is regarded as the guilty instrument or thing to which the forfeiture attaches, "from the necessity of the case as the only adequate means of suppressing the offense or wrong, or insuring indemnity to the

injured party," as affirmed by Mr. Justice Story, in the United States v. Brig, 2 How. 210, quoted by Judge Betts.

Under the statute, upon which this libel is based, no wrongdoing in which the vessel is made the guilty instrument, is required to consummate the forfeiture. The guilty intent of the offending person is attached by the mandate of the statute to the vessel, and forfeiture is denounced because of this guilty intent. The original act, Sec. 3, Ch. 50, Act of June 5, 1794, Sec. 3, p. 383, 1st U. S. Statutes at Large, lends strong support to the contention of claimants. In the structure of the section as originally passed, the language condemning the vessel to forfeiture, following upon the ascertained guilt of the offending person, was not separated from such ascertainment by the intervention of a semi-colon.

In the case of Gelston *vs.* Hoyt, it was argued, in this court, in March, 1817, by Mr. Hoffman and Mr. D. B. Ogden, for defendant in error, 3 Wheaton, 296, that "by every just rule of construction the proceeding by indictment against the offender and his conviction must precede the suit *in rem* and the forfeiture of the vessel. The phraseology of the act is different from all other statutes. By those statutes, the revenue officers have power to seize and proceed *in rem* against the thing seized as forfeited, independent of any criminal proceedings against the offending individuals. By this act the forfeiture of the thing is made to depend upon the conviction of the person, and the President alone has power to seize, and that only as a precautionary measure, to prevent an intended violation of the laws." The case stood over for re-argument, and was reargued February 23d, and decided February 27th, 1818. And the act in its present form was enacted April 20th, thereafter. And although the argument of these gentlemen prevailed on other propositions hereinafter discussed, and the court was not required to pass upon this special contention, it could not have escaped the attention of the Congress when in April, 1818, this statute was subjected to revision. If, in this revision, Congress has purposed to authorize a seizure and forfeiture of the thing, independent of any criminal proceedings against offending individuals, it was its duty to have recast the phraseology of the statute and put it in harmony with other statutes empowering revenue officers to seize and proceed *in rem* against the thing seized for forfeiture.

Libel Deficient.

The libel excepted to, not only fails to allege that the necessary criminal intent of the offending persons has been in any wise ascertained; it does not even show who the offending persons are.

The language of the statute clearly shows that the act of arming must be accompanied with the specific intent therein denounced, to consummate the offense. It follows the specific intent must be laid in the identical persons, and none other, so fitting out the vessel.

Can it be tolerated that a libel setting up the existence of this essential fact, the specific intent denounced, apprises the owners of the vessel, whose property is sought to be condemned, of the nature, essence, and identity of the offense charged, when it alleges that the Government is not informed of the names of the persons so fitting out the vessel?

Is it not apparent, under any possible interpretation of the statute, that the identity of the persons, for whose intent in doing the acts denounced, the vessel is sought to be forfeited, is an essential of the offense charged? Can the Government establish the specific intent required without proving its existence, at the time of fitting out, etc., in the mind of the identical person so fitting out?

Can it establish the identity of such persons, without charging it as a part of the libel?

In no system of pleading, is it permissible to supplement paucity of allegations by fullness of proof.

Contemporaneous Construction.

Section 3 of the Act of June 5, 1794, was enlarged, in its scope, by Section 1 of the Act of March 3, 1817, 3, Stat. 370, in two aspects:

1st. The service, in which the vessel was employed, and service against which it was directed, equally and alike was enlarged to embrace that "of any colony, district or people, with whom the United States are at peace."

2d. The method of service was also enlarged so as to embrace not only the cruising or committing hostilities, but also the aiding or co-operating "in any warlike measure whatever."

The punctuation clearly shows that the service in which the vessel was intended to be employed, whether in aid, or against, and equally and alike, whether for or against, is the service of a foreign prince or state, or of a colony, district, or people, with which prince, state, colony, district, or people, the United States are at peace.

But the act, April 20, 1818, 3 Statute, 448, in which the Act of March 3, 1817, was repealed, clearly exhibits the purpose of Congress to narrow the scope of the former act, under which a denounced intent, pure and simple, was made the basis of a forfeiture of a vessel, by restricting that intent to the doing of a conspicuous public fact, easily apprehended, that is, an intent to cruise or commit hostilities. These was too much left to construction under the former statute, in the view of the Congress, where the intent could have been made out by establishing a purpose "to aid or co-operate in any warlike measure whatever."

The meaning of the Act of April 18, 1818, now Section 5283 of the Revised Statutes, may be ascertained not only by what it says, but also by what, if the Government's construction be read into it, it fails to say, in the light of the foreign enlistment act of the mother country, passed the next year.

Contrast the two acts.

The British act, in respect of the phraseology, under construction, reads: "In the service of any foreign prince, state or potentate, or of any foreign colony, province or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people."

The points of identity and the points of departure, in the two acts, are alike instructive. It was because, in the "Salvador," R. R. 3 P. C. 218, the insurgents formed a part of the province or people of Cuba, in whose service the ship was employed, as announced by the court, that the British statute was found applicable.

In the petition for the writ of *certiorari*, herein, and the argument supporting it, the opinion of Judge Locke was assailed as based upon a misinformation in chronology; and it was asserted that the phrase "colony, district or people," the learned judge "understands to have been inserted to avoid the effect of the decision of Gelston *vs.* Hoyt, 3 Wheat. 246, decided at the February term, 1818, after the belligerency of the main South American colonies was recognized by the message of President Monroe on December 15, 1817."

It is submitted there is nothing in Judge Locke's opinion to support this assertion. On the contrary, Judge Locke, in tracing the history of the phrase, declares, as stated by Mr. Wharton in his work on International Law, upon the outbreak of war between the South American colonies and Spain, upon a special message of the President to Congress upon the subject, the words "or of any colony, district or people" were added to the description of both parties contemplated, both that one in whose employment the vessel was to enter, and that one against whom hotilities were contemplated." Rec., p. 18. And he, further, quotes the language of President Madison, in the message of December 16, 1816, upon which the change was alleged to have been introduced.

The historical point in issue was what was the status of the South American insurgents, at the time of the enactment, in which the phrase was introduced; what was the condition of the insurgents, at this time, as to recognized belligerency, which, in the view of Mr. Madison, invited this legislation?

And it was shown that Mr. Monroe who, as Secretary of State from 1811 to 1817, when he succeeded to the Presidency, must have been familiar with the inception and progress of these revolutionary movements, in his first annual message, in December, 1817, not only recognized the belligerency of these revolutionists, but also distinctly declared:

"Through every stage of the conflict the United States have maintained an impartial neutrality, giving aid to neither of the parties, in men, money, ships or munitions of war."

"They have regarded the contest not in the light of an ordinary insurrection or rebellion, but as a civil war between parties nearly equal, having as to neutral powers equal rights. Our ports have

been open to both, and every article . . . that either was permitted to take has been equally free to the other."

If further authority is required as to the recognized status of these revolutionists, it is furnished in the second inaugural of President Monroe, March 5, 1821, Richardson's "Messages and Papers of the President," Vol. 2, p. 88, in which, adverting to the termination of the last war with Great Britain, he says: "The war between Spain and the colonies in South America, which had commenced many years before, was then the only conflict that remained unsettled. . . . This contest was considered at an early stage by my predecessor a civil war in which the parties were entitled to equal rights in our ports. This decision, the first made by any power, being formed on great consideration of the comparative strength and resources of the parties, the length of time and successful opposition made by the colonies, and of all other circumstances on which it ought to depend, was in strict accordance with the law of nations."

The claim of the Government therefore, that, at the time, March 3, 1817, the phrase was put into the statute, belligerency of the Spanish-American colonies had not been formally recognized, page 3 of the petition for the writ, is wholly inadmissable. It had been recognized on "great consideration."

The case of Gelston *vs.* Hoyt is important, not only because of the priuciples decided, but also because of the times and circumstances, under which it was argued and decided. It was an action of trespass growing out of a seizure of the "American Eagle," July 10, 1810, under the Act of 1794, Ch. 50, Sec. 3; Gelston *vs.* Hoyt, 13 John. 560.

The collector, Gelston, sought to justify under the authority conferred by that act. His plea was held bad over the insistence of the defendant that it was good on general demurrer, and that the plaintiff by replication should have set up that Petion and Christophe were not independent princes or states and so have had the issue raised thereby tried as a question of fact. The defendant, as is shown by the bill of exceptions, had sought to prove that the ship was attempted to be fitted out and armed, and was fitted out and armed, with intent she should be employed in the service of that part of the island of St. Domingo, which was then under the Government of Petion to cruise and commit hostilities upon the subjects, citizens, and property of that part of the island of St. Domingo then under the Government of Christophe. Replying to this contention, the court said, page 324: "If therefore, this," that is the status of Petion, "were a fact proper for the consideration of a jury, and to be proven *in pais*, the court below were not bound to admit the other evidence," that is the evidence rejected, "unless this fact," that is the status of Petion, "was proved in aid of the evidence, for without it no forfeiture could be incurred." "If, on the other hand, this was matter of fact," that is the status of Petion," of

which the court were bound to take judicial cognizance, the court were right in rejecting the evidence," because no such status had been in fact recognized.

But the libel excepted to in the pending case, does not even allege this primary, fundamental fact, without which "no forfeiture could be incurred."

The word "people," as used in this statute, was defined in U. S. *vs.* Quincy, 6 Peters, 445, to be merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of Congress to a foreign power."

It follows that the word, "colony," and the word "district," each is, also, descriptive of the power in whose service, the vessel is to be employed; each is, also, one of the denominations applied by the act of Congress to a foreign power. It is equally clear that the added words, colony, district, or people, do not mean a part of a colony, a part of a district, or a part of a people or many people. They mean a colony, district, or people, constituting a body politic, that is charged with recognized political power, a foreign power.

That it had been attempted to import into Section 5283, the effect given to Sec. 7 of the Foreign Enlistment Act, 59 Geo. III, in the numerous cases, and the discussions thereof, arising thereunder, could not, it is presumed, have escaped the attention of the Supreme Court; the "Itata" case had been before it on application for a writ of *certiorari*; nor was this court unaware of the recommendations of President Harrison to Congress based on the decision of the "Itata" case; nor was it unaware that the Congress had failed to respond to those recommendations, when in May, 1896, in the Wiborg case, 163 U. S. 632, it analyzed the statutes grouped under Title LXVII, Neutrality Laws; and interpreted their effect as a system.

It is apparent that this court, in the Wiborg case, brought in opposition and contrast the eleven sections from 5281 to 5291, for the purpose of defining and ascribing to each its appropriate functions in the statutory system thereby enacted, and declared that "Section 5283 deals with fitting out and arming vessels in this country in favor of one foreign power against another foreign power with which we are at peace."

The court, after this analysis of the sections commented on, proceeds to set forth in terms Section 5286, under which Wiborg was indicted. And in the analysis of this section the court makes it apparent, from its terms as contrasted with Section 5283, theretofore quoted also at length, that Section 5286, while its general purpose "was undoubtedly designed to secure neutrality in wars between two other nations, or between two contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency."

That this language applies to Section 5286, and not to Section 5283, is obvious not only from the context, but also because Section 5286 was the only section under consideration. Its meaning and application of the facts under consideration were to be ascertained by reference to the statutory system as a whole; and the court demonstrated that though this section was placed under Title LXVII, headed neutrality, and though it did tend to secure neutrality in wars between foreign powers or recognized belligerencies, its operation was not necessarily dependent on such a recognized state or status of belligerency. And the court enforces this reasoning by reference to its language, following as it does the recommendations of President Washington.

Why does the court contrast the language of Section 5286 with Section 5283, if it be not to show that while, as it says, Section 5283 dealt with fitting out and arming vessels in this country in favor of one foreign power as against another with which we are at peace, Section 5286 did not concern itself with a state of belligerency recognized or not waged by one foreign power against another with which we are at peace, but interdicted absolutely and without qualification any person from setting on foot in this country any military expedition to be carried on from thence against the territory or domain of any foreign prince or state, or any colony, district or people with whom the United States are at peace, and wholly irrespective of the fact of a state of belligerency, then existing, as between states or people with whom we are at peace?

The distinction between the two sections, in which Section 5283 is confined in its operations to the conservation of neutrality between recognized belligerents, is further shown by the chief justice in tracing the history of Section 5286, and declaring: "The language of the section closely follows the recommendation of President Washington in his annual address of December 3, 1793," quoting it. This language is quoted more at length in United States *vs.* O'Sullivan, 27 Federal Cases, 375, cited and relied on by the Government in the case at bar, and made the basis of the circuit court's conclusions, that what is now Section 5286 performs the functions we are insisting on, and that what is now Section 5283 performs the functions and none other ascribed to it in the Wiborg case.

President Washington, as is therein shown, in this recommendation urged upon Congress four special calls for extending the criminal code, and the court adds:

"It is to be remarked that out of three of the above four special calls for extending the criminal code, only one relates to a state of neutrality, the others looking to provisions for maintaining the sovereignty and peace of the United States, in their relations with foreign powers as well in peace as at war with each other."

And recurring to the language of the recommendation, it manifestly appears that the specific provision, relating to a state of neutrality, inhibiting "individuals within the United States from arraying themselves in hostility against any of the powers at war," was the provision carried into Section 5283.

But, under Section 5286, the offense therein denounced, may be committed, irrespective of our obligations to observe neutrality between contending powers, irrespective of whether the service to be engaged in, is in favor of one power as against another with which we are at peace, irrespective of the character of the war which is in fact being waged, whether it be a war waged by an unrecognized insurrectionary force seeking to displace the government of the recognized power; or whether it be a war between recognized foreign powers; or whether a state of war is to be instituted by the military expedition so fitted out. And, hence, the court was led to say while "the statute was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending powers recognized as belligerents, but its operation is not necessarily dependent on the existence of such a state of belligerency."

This language, as applied to Section 5286, does not in the slightest degree qualify the force of the language of the court, that "Section 5283 deals with fitting out and arming vessels in this country in favor of one foreign power as against another foreign power with which we are at peace." And thus affirms the decision in United States *vs.* Quincy, 6 Peters, 445, that the word "people" as used in the statute, was one of the denominations applied to a foreign power.

A. W. COCKRELL,
Proctor for Appellee.

Motion of Calderon Carlisle for Leave to File Brief as Amicus Curiæ.

In the Supreme Court of the United States. October Term, 1896.

The United States, Appellant,
vs.
The Steamer "Three Friends," etc. } No. 701.

Washington, D. C., *February 15th, 1897.*

Present on behalf of the United States, the Attorney General and the Assistant Attorney General.

Present on behalf of the appellees, Mr. Phillips, Mr. Cockrell and Mr. Barrs.

Mr. Carlisle. I desire to ask leave of your honors to file in this case, No. 701, a brief as *amicus curiæ*. I have asked the Attorney General, representing the United States, and Mr. Phillips, representing the appellee, if they have any objection, and they both very courteously state that they have not.

Mr. Phillips. The brief has just been handed me, and I do not know what is in it. While I would be very glad to allow to the representative of the Spanish Government the right to file the brief, I would like to have an opportunity to reply to it.

The Chief Justice. Certainly, that may be done. How much time will you desire?

Mr. Phillips. I have not seen the brief, but I only desire a few days. I doubt whether I will trouble your honors at all.

The Chief Justice. Mr. Clerk, give Mr. Phillips until Friday to file his reply.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,

vs.

THE STEAMER "THREE FRIENDS," HER TACKLE, APPAREL, FURNITURE, ETC.

On Writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit.

Brief of Calderon Carlisle, as amicus curiæ, respectfully offered to the Court.

The undersigned respectfully asks the leave of the court to submit this brief as amicus curiæ.

Having in the line of professional duty studied the subject in hand he ventures, with diffidence, to hope that he may afford some aid to the court as one of its officers.

This case is brought here for review by writ of certiorari issued by this court in the exercise of the discretion conferred by the Judiciary Act of 1891.

Extraordinary circumstances induced the Secretary of State to request the Attorney General to apply for the writ of certiorari, and to ask for a speedy hearing, notwithstanding the recess of the court announced for the month of February.

The court has granted both applications and reconvenes specially during its vacation to hear the cause.

It is conceived that it must be taken as established at this hearing that it is a matter of the most pressing gravity and immediate importance, both to the Department clothed with the administratration of our foreign relations, and to that upon which devolves the administration of the laws of the United States imposing forfeitures, that an authoritative construction of Section 5283 of the Revised Statutes should be announced at this particular time by the court of last resort.

When this court denied, without prejudice, the petition for certiorari in the case of the "Itata," at the October Term, 1892, there was no public emergency requiring its consideration of the case. The civil disturbances in Chile had ceased, and the Congressional party, in whose service the "Itata" had been employed, had become the recognized government of Chile with whom the United States were in full diplomatic intercourse. For this very reason, in all probability, the application did not appear to have been made at the request of the Secretary of State, or even with his knowledge and consent, and, doubtless for the same reason, was never renewed.

In the present case the court must take judicial notice of the facts stated in the President's Proclamation of June 12, 1895, announcing that—

> "the Island of Cuba is now the seat of serious civil disturbances, accompanied by armed resistance to the authority of the established government of Spain, a power with which the United States are, and desire to remain, on terms of peace and amity."

It must further take judicial notice of the continuance of such civil disturbances and armed resistance proclaimed on the 27th of July, 1896, and announced in the annual message of the President to the Fifty-fourth Congress at this

present session; and it must also note the extent and character of the hostilities described by the President in his message and by the Secretary of State in his report.

This case is a civil proceeding in rem in admiralty. The technical niceties of the common law or of criminal proceedings have no place here. No mere informality or inaccuracy will defeat the proceeding for forfeiture under Section 5283.

> The Caroline, 7 Cr. 496; The Edward, 1 Wheat. 264; The United States *vs.* Weed, 5 Wall. 62; The Watchful, 6 Wall. 91; The Gazelle, 128 U. S. 487

An appeal from the district court in an admiralty cause suspends the sentence of that court, and the writ of certiorari herein issued removes the cause to this court, to be reviewed as if it were here pending on appeal.

> Yeaton *vs.* The United States, 5 Cr. 281; The Lucille, 19 Wall. 73; The Judiciary Act of 1891, Section 6.

The exercise of the appellate power of this court by means of the writ of certiorari, provided for by the Judiciary Act of 1891, is no innovation in principle, and is an important part of a carefully devised system to secure a wholesome supervision in certain cases by this court, notwithstanding the creation of the Circuit Courts of Appeals.

The section under which the civil proceeding in admiralty against the "Three Friends" was instituted is as follows:

> "SEC. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or

people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

I.

The main question involved is whether the Neutrality Laws of the United States and particularly Section 5283, R. S., cover the case of the Cuban Insurrection, the existence of which has been proclaimed by the President on June 12, 1895, and July 27, 1896.

Judge Locke has held that Section 5283 does not apply to a vessel fitted out and armed within the territory of the United States with intent that she shall be employed—

> "in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the Island of Cuba, to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain in the Island of Cuba, with whom the United States are and were at that date at peace" (Rec., p. 1.)—

because the libel

> "*does not allege that said vessel had been fitted out with intent that she be employed in the service of any foreign prince or state, or of any colony, district or people* RECOGNIZED AS SUCH BY THE POLITICAL POWER OF THE UNITED STATES." (Rec., p. 23.)

It is submitted that the learned judge has superadded a requirement which is not to be found either in the words or the intent of the legislature.

Of the question decided Judge Locke himself says:

> "This question has been before the courts frequently, and several times been examined and commented upon, but in no case which I have been able to find has it been so presented, unconnected with questions of fact, that there has been a ruling upon it so that it can be considered as final and conclusive."

It is to be noted however that in at least three instances there have been condemnations under Section 5283, where the vessels, munitions, etc., condemned were intended to be employed in the service of insurgents who had not been recognized by this Government, either as a body politic or as belligerents.

These cases are Mary N. Hogan, 18 Fed. Rep., p. 529; United States *vs.* One Hundred Kegs of Powder and Two Hundred and Fourteen Boxes of Arms, 20 Fed. Rep., p. 50, and the City of Mexico, 28 Fed. Rep., p. 148.

The libels, sentences and opinions in these cases are printed and filed in this case for the convenience of the court.

The decision of Judge Locke in the present case is the first which has put upon Section 5283 the construction that the colony, district or people in whose service the vessel was to be employed must be recognized as such by the political power of the Government of the United States; and his decision in this case directly overrules his own decision, in 1886, in the case of the City of Mexico.

The "City of Mexico" was proceeded against before the same judge, and in the same court, for piratical aggression under one libel, and for violation of Section 5283 under a second libel. The first was dismissed by Judge Locke;

and, under the second, the vessel was condemned, although to use his own language—

> —"there was no war in that part of the world going on, or in contemplation, except what was intended by General Delgado."

The only "colony, district or people" in whose service the vessel was intended to be employed were General Delgado and his associates.

It is to be noted that this court in U. S. *vs.* Wiborg, in speaking of the whole neutrality law, uses the following language:

> "The statute was undoubtedly designed in general to secure neutrality in wars between two other nations or between contending parties, recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency."

The court cites as authority the opinion of Attorney General Hoar, the full text of which will be found in the pamphlet containing the statutes and proclamations filed by the Attorney General with his preliminary brief. The same learned counsel who represents the appellee in this case asserted in his brief for plaintiff in error in Wiborg *vs.* U. S., speaking of the Act of 1818:

> "This last act added a provision to cover cases arising out of the civil wars being waged between Spain and South American countries; it forbids fitting out of vessels to cruise *in the service of any colony, district, or people.*
>
> "THIS WAS INTENDED TO APPLY TO UNRECOGNIZED GOVERNMENTS."

The words "colony, district or people" aptly designate any communities or individuals not recognized as political powers.

Judge Locke has dismissed the libel in the case of the "Three Friends" on a construction of the statute which absolutely prevents its application to any case of insurrection or civil war where there is not a recognition of the insurgents as a body politic. In other words where the insurgents are not recognized for some purpose as a "prince or state."

The fallacy of Judge Locke's method of approaching the question of the construction of section 5283, and his method of reasoning about it results, from a failure to observe at the outset the fair and primary meaning of the words used.

"Foreign prince or state," comprehends every form of foreign government recognized as such by the laws of the United States and by the law of nations. Foreign "district, colony or people" comprehends every fraction of the territory, subjects or citizens of any foreign prince or state, which fraction is *not* recognized as a foreign prince or state by the laws of the United States or by the law of nations. And to make the enumeration broader still while the adjective "foreign" is applied to "prince or state," it is not applied to the words "colony, district or people." The words are "or of any colony, district or people."

What this court said in Gelston *vs.* Hoyt, was that Congress had in the Act of 1794 limited the statute to vessels intended to be employed in the service of any foreign prince or state to cruise or commit hostilities against another foreign prince or state, and these words imported a necessity in our own law and in the law of nations that they should be recognized as such by the United States. When Congress added the words "colony, district or people," which words of themselves import no necessity of any recognition by the United States under their own laws, or under the law of nations, nothing was said as to civil war, or belligerency, or

existing insurrection; nothing was meant to depend on these conditions. The words used required no pre-existing conditions of any kind to make unlawful under the act, fitting out, etc., of a vessel with intent that she be employed in the service of any colony, district or people to cruise or commit hostilities against a nation at peace with the United States, or any part or fraction of its territory or inhabitants.

This court in Gelston *vs.* Hoyt simply decided that the words in the Act of 1794 "foreign prince or state" would not cover any fraction of the territory or people of a foreign prince or state. A foreign prince or state could only be known to our courts by their recognition as such by the political department of the Government. When Congress superadded to the words "prince or state" the words "or of any colony, district or people," it simply declared that courts should no longer in any sense be dependent on the political department for the application of the statute; for the prohibited hostilities must not be prepared on our territory, whether in the service of a recognized foreign prince or state, or of any colony, district or people, foreign or domestic; nor against any foreign prince or state, or any colony, district or people with whom we were at peace; that our compacts of peace with foreign princes and states, which were made "*without exception of persons or places*," should not be endangered or broken by any person whomsoever, by means of any pretence of limiting the service or the hostility by exceptions "*of persons or places.*"

It is true that Chief Justice Marshall said in the case of the "Gran Para" that the words colony, district, or people, were added to meet the altered condition of the world, but no such question as is here raised was before him. His general statement was entirely accurate, and to meet the altered condition of the world, Congress chose to use the widest enumeration possible, and cannot on any sound principle of construction be held to mean the same thing in any sense by the words added as by the original words.

Any colony, means any colony which is not a foreign prince or state in any sense. Any district means any geographical subdivision of the territory of a prince or state which is not a foreign prince or state in any sense, or a colony in any sense; and any people, means any people, which or who, collectively or individually, are not in any sense a foreign prince or state, or a colony, or a district.

In fine, the statute so worded is clearly meant to cover any case of hostility from our territory against a friendly foreign prince or state, without exception of persons or places, either as to the service in which the hostilities are to be committed, or as to the object against which the hostilities are to be committed.

The words "colony, district or people" were used in Statutes both before and after 1818.

The words "colony, district, or people" were first introduced into the statutes of the United States by the Act of March 3, 1817 (3d Stat. at L., p. 370). The history of this act was spread before the world by the United States at Geneva (Case of U. S., pp. 138–9):

> "The facts appear to be these: On the 20th December, 1816, the Portuguese Minister informed the then Secretary of State (Mr. Monroe) of the fitting out of privateers at Baltimore to act against Portugal, in case it should turn out that the Government was at war with the 'self-styled Government of Buenos Ayres.' He further stated that he did not make the application in order 'to raise altercations or to require satisfaction,' but that he solicited 'the proposition to Congress of such provisions by law as will prevent such attempts for the future,' being 'persuaded that my (his) magnanimous sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States.' Mr. Monroe replied, on the 27th of the same month, 'I have communicated

> your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the executive power as will be necessary to preserve the strict neutrality of the United States, . . . and effectually to guard against the danger in regard to the vessels of your Sovereign which you have anticipated.' The Act of 1817 was passed and officially communicated to the Portuguese Minister on the 13th of March, 1817."

This act was limited to two years and was repealed by the permanent Act of April 20, 1818—substantially re-enacting the provisions of the law of 1817.

The words "colony, district or people" have been since retained in all subsequent legislation on this subject. The words occur in the act passed in 1838, which was only in force for two years—the Case of the United States at Geneva (pp. 133 and 134), gives the following history of the act:

> "The Act of 1838 was enacted on the suggestion of Great Britain: In the year 1837 a formidable rebellion against Great Britain broke out in Canada. Sympathizers with the insurgents beginning to gather on the northern frontier of the United States, Mr. Fox, the British Minister at Washington, 'solemnly appealed to the Supreme Government promptly to interpose its sovereign authority for arresting the disorders,' and inquired what means it proposed to employ for that purpose. The President immediately addressed a communication to Congress, calling attention to defects in the existing statute, and asking that the Executive might be clothed with adequate power to restrain all persons within the jurisdiction of the United States from the commission of acts of the character complained of. Congress thereupon passed the Act of 1838."

It can hardly be said that the United States recognized the Canadian insurgents, as a "political power" by this

act. The President in his message had said to Congress that the existing laws were adequate and applicable to the *punishment* of offenders, but that what was needed was additional means of *prevention*. Nobody suggested in Congress that the existing laws did not apply to Canadian insurgents, and that they only applied to recognized belligerents. The suggestion would have been most pertinent if it had occurred to anybody because Congress was invited to give greater power to the Executive for the prevention of offenses against *existing* laws. The President and Congress both in effect asserted that existing laws applied to the Canadian insurgents, that there was ample provision for the punishment but not for the prevention of violations of existing laws. No new offense was created by the Act of 1838, but Congress itself by that act applied the provisions of the Act of 1818 to the case of unrecognized Canadian insurgents.

The words "prince or state" cover every political power recognized as such by the United States, and the added words every unrecognized fraction of the territory or inhabitants thereof.

The words used in the original Neutrality Act of 1794, "prince or state," cover every recognized political power known to the law of nations.

In the first section of the Act of 1818, now Section 5281 of the Revised Statutes, the same provisions were contained as in the first section of the Act of June 5th, 1794, except that the commission therein prohibited was not limited to a commission to serve a foreign prince or state, but was forbidden in the case of a foreign colony, a foreign district, or a foreign people, who in the sense of the law of nations could only be known to the United States as portions of the territory, or citizens, or subjects of some foreign prince or state. The same modification

of the second section of the Act of 1794 was made by the second section of the Act of 1818, now Section 5282.

In the third section of the Act of 1818, now Section 5283 of the Revised Statutes, an additional modification is introduced. Instead of continuing after the words "prince" and "state," the additional words superadded in the preceding section, the words "or of any" are inserted after the words "prince" and "state," a comma follows the word "state," and the succeeding words are separated from the qualification "foreign," left to apply to "prince or state," but excluded by the words "or of," and the broad word "any" from application to the words "colony, district or people," which follow.

The sovereign rights of peace and war belong, within the territory of the United States, exclusively to the Federal government. They are not here to be exercised by or in the service of any foreign prince or state or of any colony, district, or people, foreign or domestic.

The usual form of treaties of peace is that of the treaty with Spain of 1795:

> "There shall be a firm and inviolable peace and sincere friendship between his Catholic Majesty, his successors and subjects, and the United States and their citizens, *without exception of persons or places.*"

The same form of expression is repeated in the treaty between Spain and the United States of 1819. The peace provided for by this treaty is a peace between the United States and their citizens, and every colony, district or people within the territory, jurisdiction or control of the United States, and the King of Spain, and his subjects and every colony, district or people within his territory, jurisdiction or control.

The whole purpose of the so-called Neutrality Laws of the United States from 1794 down to the present day was to prevent the citizens or inhabitants of the United States from making war upon any nation, or upon the citizens or parts

of such nation, with whom the United States were at peace. The original act, by its broad enumeration of only foreign princes or states, made possible certain technical objections in proceedings in municipal courts, which would tend to defeat the purpose of Congress in passing the act. The situation of the colonies, districts or peoples in South America naturally attracted the attention of the legislature, but Congress did not by any apt words in any wise limit or control the words "colony, district, or people," or make any requirements as to political recognition.

In Section one of the Act of March 3, 1817, and in Section three of the Act of 1818, now Section 5283 of the Revised Statutes of the United States, it was plainly declared that it should be unlawful within the limits of the United States to fit out and arm, or procure to be fitted out and armed, or knowingly to be concerned in the furnishing, fitting out or arming of any vessel, with intent that such vessel shall be employed in the service, not only of any foreign prince or state, which description includes every form of foreign government known to the law of nations, and recognized by the United States as a foreign government, but in the service of any colony, any district or any people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace.

If a foreign colony, district or people are still for every purpose a part of the mother country, the United States are at peace with them by reason of their engagements with the mother country, and the legislature has forbidden the employment in their service of a vessel to cruise or commit hostilities against the subjects, citizens or property of the prince or state, to which they belong.

If the colony, district or people has in any way, or for any purpose, separated itself or themselves, from the mother country, the prohibited acts are none the less, and not a

whit more, forbidden by the plain provisions of the act. What the United States is interested in is that no acts of war shall be committed from her territories against any foreign prince or state, or any part of the territory of any foreign prince or state, or against the subjects or citizens of any foreign prince or state, or against the property of any foreign prince or state, or of any colony, district or people with whom the United States are at peace, by any person whatsoever, acting on his own authority, or on that of some foreign prince or state, or of any colony, district or people, The United States alone holds within her territory the sovereign right of war, and as a matter of reasonable municipal administration it was proper to provide for the punishment of every unauthorized act, which should either in itself amount to war or have a tendency to provoke war. The acceptance and exercise of a commission to serve in war, the enlistment of troops or sailors, the furnishing, fitting out or arming of any ship or vessel to cruise or commit hostilities, the augmentation of force of any armed vessel, the beginning, setting on foot, providing or preparing the means for, any military expedition or enterprise were all acts, which the United States could not suffer any individual or collection of individuals, whether citizens or foreigners, or any foreign prince or state, or part of the territory of a foreign prince or state, to do of their own authority within the territories of the United States, and having the clear right to forbid all of these acts, and the clear duty to itself and to foreign nations, to prevent unauthorized acts from disturbing its peaceful relations, it has distinctly forbidden to everybody every form of warfare from its territories against every foreign nation, with whom it is at peace, and against all the subjects, citizens, parts and divisions of those nations.

If, as can hardly be doubted, this is the clear intent of the legislation of the United States, plainly expressed in its laws, what a monstrous suggestion it is that acts of war may

be innocent, when committed in favor of, or in the service of, unrecognized insurgents, as to whom the United States deny to the mother country all rights of war upon the high seas, leaving her to deal as best she may with the insurrection within her borders, but that similar acts would become criminal under the municipal laws of the United States the moment the United States accorded belligerent rights, or recognized in any other qualified form the insurgents as distinct from the Spanish Government.

Distinction between "the service of" and "hostilities against" any colony, district or people.

The statute uses the words "colony, district or people," in two relations:

First, that the vessel is to be employed—

> "in the service of any foreign prince or state or of any colony, district or people."

Second, that the intent must be—

> "to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people with whom the United States are at peace."

Under the first relation, it is as clearly applicable to an insurrection, as to a war, the enumeration being intended to prohibit the fitting out, etc., within the territory of the United States of vessels to cruise or commit hostilities in the service of any foreign nation, recognized as such by the political power of the United States, all of which they fully, accurately and exhaustively describe under the words "prince or state," or in the service of any fraction of a foreign power not recognized as such by the political authorities of the United States, or of any colony, district or people, whether the "colony" of a foreign country anticipating insurrection, or already in a state of insurrection; or

a "district" of a foreign country; or a "people" in a foreign country; or in the service of a colony of individuals, native or foreign, about to go out from the territory of the United States to commit hostilities, to establish themselves by force against, and within the territory of a friendly foreign government, or any part of it; or in the service of any district of the United States, (none of which districts have power of peace and war), whether it be a judicial district, as the Southern District of Florida, a geographical district as the district south of Mason and Dixon's Line, or a constitutional district, as the District of Columbia; or in the service of *any people*, "people" who are subjects of a foreign prince or state, the "people" of any portion of the territory of a foreign prince or state, the "people" of the United States, or any portion thereof, or even in the service of some unknown, unrecognized "people" in the heart of Africa.

There is no indication of any intent, and no requirement in any of the words used that the colony, district or people, in whose service the vessel was to be employed should be recognized as such by the political power of the United States.

When, however, the words "colony, district or people" are construed in their other relation, in connection with the word "hostilities," then it may be important that belligerency should be recognized. A sovereign lawfully suppressing insurrection within his own borders, so long as the insurrection is not recognized as a civil war, conferring belligerent rights upon the insurgents, cannot be said to be committing hostilities.

See opinion of Attorney General Hoar, 13 Op., p. 177.

The moment such belligerency *is* recognized he is committing hostilities and the law applies to his acts, as well as to those of the insurgents, not because Congress has required any action by the political department to explain

its meaning or apply its law, but because the political department having taken a step with certain recognized consequences under the law of nations, those consequences follow, and what were not hostilities before, come to be such.

The words "to cruise" can only be applicable where the colony, district or people against which the cruising is to be done, has a naval power, or a commerce afloat, and when the nation fitting out the cruiser is undertaking to exercise rights of war on the high seas. It cannot apply to a patrol of a nation's own coast, and wherever the word "cruise" would properly apply to the mother country it might be said that the belligerency of the colony, district or people against whom the cruising was to be done, must, in the sense of the statute, be necessarily recognized.

II.

The release on bond of a vessel libelled for forfeiture under Section 5283, before answer or hearing and against the objection of the United States, is wholly unauthorized.

Admiralty Rule 10 of this court provides for the sale of perishable articles or for their delivery upon security to "*abide by and pay the money awarded by the final decree.*"

Rule 11 is as follows:

> "In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned."

These rules were promulgated by the court in pursuance of the Act of August, 1842, Ch. 188, and it is submitted that they confer no power on a judge of a district court to release a vessel, before answer or hearing and against the opposition of the United States, in a case of libel for forfeiture under the neutrality law.

Section 938 of the Revised Statutes provides for the release on bond of any vessel, goods, wares or merchandise—

> "seized and prosecuted *under any law respecting the revenue from imports or tonnage or the registering and recording, or the enrolling and licensing of vessels.*"

Section 939 provides for the sale of vessels—

> "*condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bond shall not have been given,*" *etc.*

Section 940 authorizes the judges to do in vacation everything that they could do in term time in regard to bonding and sales, and to—

> "exercise every other incidental power necessary to the complete execution of the authority *herein* granted."

Section 941 provides that—

> "when a warrant of arrest or other process in rem is issued in any cause of admiralty jurisdiction, *except the cases of seizure for forfeiture under any law of the United States,* the marshal shall stay the execution of such process or discharge the property arrested, if the process has been levied on receiving from the claimant of the property a bond or stipulation *in double the amount* CLAIMED *by the libellant.*"

It would thus appear that Sections 938 and 939 are confined absolutely to seizures, prosecutions and forfeitures under the enumerated statutes of the United States respecting revenues from imports or tonnage, or the registering

and recording, or the enrolling and licensing of vessels. That Section 940 which is taken from the same original acts is simply meant to authorize the exercise of the statutory power given by the two preceding sections in vacation as well as in term time, and that Section 941 does not apply to any case of seizure for forfeiture under any law of the United States and is by its terms confined to the case of a money demand which a libellant is seeking to enforce by a proceeding in rem in a court of admiralty.

The vessel should be recalled on the ground that the order of release was improvidently made.

Mr. Justice Clifford calls attention in U. S. *vs.* Ames, 99 U. S., p. 39, to the fact that these sections are applicable to seizures under the revenue and navigation laws.

In the same case, Mr. Justice Clifford, after alluding to those authorities which deny the power of the admiralty court to recall property for any purpose, after a stipulation for value has been given and the property has been delivered to the claimant, says (99 U. S. page 41):

> "Other decided cases, perhaps for better reason, hold that in case of misrepresentation or fraud, *or in case the order of release was improvidently given without any appraisement or any proper knowledge of the real value of the property, it may be recalled before judgment where the ends of justice require the matter to be reconsidered.*"

It is to be noted that the suit of the United States *vs.* Ames was an equity suit, and what Mr. Justice Clifford says in the succeeding part of his opinion in regard to the power of the admiralty court is applicable to all the courts of admiralty, as is clearly indicated by his calling attention

to the fact that no application was made either to the district or circuit court in the admiralty cause to recall the property. Indeed he says, page 43:

> "Proceedings in rem are exclusively cognizable in the admiralty, and the question whether a case is made for the recall of property released under bond or stipulation in such a case must, beyond all doubt, be determined by the courts empowered to hear and determine the matter in controversy in the pending suit."

It is the duty of the district courts to refuse to release vessels libelled under Section 5283.

It is submitted that the correct view of the duty of the admiralty courts of the United States in cases arising under Section 5283 is taken by Judge Brown in the case of the "Mary N. Hogan," 17 F. R., p. 813, when he refused to release that vessel on stipulation. The learned judge uses the following language:

> "In the great majority of cases suits are brought, and the arrest of the vessel is made, for the purpose only of securing payment of some pecuniary demand. In such cases the object of the suit will be fully secured by permitting a good bond, with sureties, to be substituted as security in place of the vessel during the pendency of the litigation; and thereby not only is the great expense of keeping the vessel in custody for a considerable period avoided, but the vessel is also allowed in the meantime to be engaged in the pursuits of commerce. Rule 11 is clearly designed for this purpose."
>
> "It is not in form imperative in all cases of the arrest of vessels, but provides only that the vessel 'may' be delivered, etc., thus leaving to the court a discretion which may be rightly exercised under peculiar circumstances, *and, as it seems to me, the rule clearly should not be applied in those cases where the object of the suit is not the enforcement of any money*

demand, nor to secure any payment of damages, but to take possession of and forfeit the vessel herself, in order to prevent her departure upon an unlawful expedition in violation of the neutrality laws of the United States. Such by the statements of the libel appears to be the sole object of this suit, and *to permit the vessel* as soon as arrested, *to be bonded by the very persons alleged to be engaged in this unlawful* expedition, and bonded *presumably* for the purpose of immediately prosecuting it, *would be to facilitate in the most direct manner the unlawful expedition,* and would practically defeat the whole object of the suit *and render the Government powerless by legal proceedings to prevent the violation of its international obligations.*"

"No section of the statutes other than Section 5283 fully meets the circumstances of this case. *That section is rightly invoked to enable the Government to preserve itself from large possible liabilities through a violation of its treaty obligations to Hayti.* IT IS CLEARLY NOT THE INTENTION OF SECTION 5283 IN IMPOSING A FORFEITURE TO ACCEPT THE VALUE OF THE VESSEL AS THE PRICE OF A HOSTILE EXPEDITION AGAINST A FRIENDLY POWER, which might entail a hundred-fold greater liabilities on the part of the Government. *No unnecessary interpretation of the rules should be adopted, which would permit that result.* And yet such might be the *result, and even the expected result,* of a *release of the vessel on bond.* The plain intent of Section 5283 is effectually to prevent any *such expedition,* altogether, through the seizure and forfeiture of the vessel herself. The Government is therefore entitled to retain her in custody, and Rule 11 cannot be properly applied to such a case."

It is to be noted that the expedition spoken of by the learned judge is not simply a "*military* expedition or enterprise," but a *hostile* expedition, *i. e.*, an expedition to commit hostilities.

The judge also, in the same opinion, makes the following statement:

> "Upon the papers submitted it appears that the proceedings are promoted at the instance of responsible officers of the Haytian Government, and there is no evidence before me tending to show that the proceedings are in bad faith and malicious, or on insufficient prima facie grounds; and the application for appraisers for the purpose of bonding should therefore be denied."

III.

The undersigned cannot foresee the scope of the oral argument or the contentions of the appellee in this cause, and he ventures to add for the convenience of the court some extracts from its own decisions bearing on the proper construction of the statutes involved, and some decisions of the district courts in admiralty proceedings thereunder.

The neutrality laws of the United States are not strangers to this court, but they have come before it in other relations than the present.

The third section of the Acts of 1794 and 1818 from which section 5283 is taken have been frequently before this court in prize causes, involving captures made by vessels unlawfully fitted out or manned within the United States.

Chief Justice Marshall in the case of the "Gran Para," 7 Wheat., p. 488, speaking of the Act of 1794, says:

> "The third section makes it penal for any person within any of the waters of the United States to be knowingly concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise, etc.

"It is too clear for controversy that the 'Irresistible' comes within this section of the law also.

"The Act of 1817, Chapter 58, adapts the previous laws to the actual situation of the world by adding to the words 'of any foreign prince or state' the words 'or of any colony, district or people,' etc. The Act of April, 1818, Chap. 83, re-enacts the Acts of 1794, 1797 and 1817 with some additional provisions."

In this same case Chief Justice Marshall, speaking of the contention that the fitting out of the vessel in Baltimore was a commercial venture, and that the hostile character was only assumed at La Plata, says:

"If this were to be admitted in such a case as this the laws for the preservation of our neutrality would be completely eluded so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew to become perfectly legitimate cruisers purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would indeed be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts that the arms and ammunitions taken on board the 'Irresistible' at Baltimore were taken for the purpose of being used on a cruise, and that the men there enlisted, though engaged in form as for a commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe that there was one. Although there might be no express stipulation to serve on board the 'Irresistible' after her reaching the La Plata and obtaining a commission, it must have been completely understood that such was to be the fact. For what other purpose could they have

undertaken this voyage. Everything they saw, everything that was done, spoke a language too plain to be misunderstood."

The Estrella, 4 Wheat., p. 309.
The Bello Corrunes, 6 Wheat., p. 171.
The Santisdima Trinidad, 7 Wheat., 337.

This court decided the case of Gelston *vs.* Hoyt, at the February Term, 1818. The case arose under the Act of 1794, but the words "colony, district or people" had already been introduced into the laws of the United States in the Act of 1817, and were added to the words "prince or state" in all the sections where those words were used in the new law of 1818.

This court had been always disinclined to treat as pirates persons who were committing bona fide hostilities against a particular state.

The case of the United States *vs.* Palmer, 3 Wheat., 611, heard by the Supreme Court at the February Term, 1818, came up on certificate from the Circuit Court for the District of Massachusetts. The proceeding was an indictment for piracy. The acts alleged took place in July, 1817. The case was heard at circuit October 15, 1817. The Act of 1817 had no application to the case yet in the questions of the Massachusetts Circuit Court, which appear in 3 Wheat., page 614, the words "colony, district or people" frequently recur. The fifth, sixth, ninth and tenth questions distinctly mention any revolted colony, district or people, which have thrown off their allegiance to their mother country and *have never been acknowledged by the United States as a sovereign or independent nation or power.*

Chief Justice Marshall, in giving the opinion of the Supreme Court of the United States, says:

"The first four questions relate to the construction of the eighth section of the act for the punishment

of certain crimes against the United States. The remaining seven questions respect the rights of a colony, or other portion of an established empire, which has proclaimed itself an independent nation, and is asserting and maintaining its claim to independence by arms."

As to the first question the court was of opinion that the crime of robbery committed by a person on the high seas, on board of any ship or vessel belonging exclusively to the subjects of a foreign state, on persons within a vessel belonging exclusively to subjects of a foreign prince or state, is not a piracy within the true intent and meaning of the act for the punishment of certain crimes against the United States; and he continues:

"This opinion will probably decide the case to which it is intended to apply. Those questions which respect the rights of a part of a foreign empire, which asserts and is contending for its independence, and the conduct which must be observed by the courts of the Union towards the subjects of such section of an empire who may be brought before the tribunals of this country, are equally delicate and difficult. As it is understood that the construction which has been given to the Act of Congress will render a particular answer to those unnecessary, the court will only observe that such questions are generally rather political than legal in their character. They belong more properly to those who can declare what the law shall be, and can place the Nation in such a position with respect to foreign powers as to their own judgment shall appear wise, to whom are intrusted all its foreign relations, than to that tribunal whose power, as well as duty, is confined to the application of the rule which the legislature may prescribe for it. In such contests a nation may engage itself with the one party or the other, may observe absolute neutrality, may recognize the new state absolutely, or may make a limited recognition of it. The proceedings in courts must depend so entirely on the course of the government that it is difficult to give a

precise answer to questions which do not refer to a particular nation. It may be said generally, that if the government remains neutral, and recognizes the existence of a civil war, its courts cannot consider as criminal those acts of hostility which war authorizes and which the new government may direct against its enemy. To decide otherwise would be to determine that the war prosecuted by one of the parties was unlawful, and would be to arrange the nation, to which the court belongs, against that party. This would transcend the limits prescribed to the judicial department. It follows as a consequence, from this view of the subject, that persons or vessels employed in the service of a self-declared government, thus acknowledged to be maintaining its separate existence by war, must be permitted to prove the fact of their being actually employed in such service by the same testimony which would be sufficient to prove that such vessel or person was employed in the service of an acknowledged state. The seal of such unacknowledged government cannot be permitted to prove itself, but it may be proved by such testimony as the nature of the case admits, and the fact that such vessel or person is so employed may be proved without proving the seal."

In the 6th Wheat., page 171, in the case of the "Bello Corrunes," the court say:

"By the second section of the fourteenth article of the Treaty with Spain, citizens, subjects, or inhabitants of the United States are strictly prohibited from taking any commission, or letter of marque, for arming any ship or vessel to act as privateers against the subjects of His Catholic Majesty, or the property of any of them, from any prince or state, with which the said King shall be at war, and it is further provided that if any person of either nation shall take such commission or letters of marque, he shall be punished as a pirate."

"Whatever difficulties there may exist under the free institutions of this country in giving full efficacy

to the provisions of this treaty by punishing such aggressions as acts of piracy, it is not to be questioned that they are prohibited acts and intended to be stamped with the character of piracy, and to permit the persons engaged in open prosecution of such a course of conduct to appear and claim of this court the prizes they have seized, would be to countenance a palpable infraction of a rule of conduct declared to be the supreme law of the land. Some doubts have been suggested on the use of the words 'state at war with Spain.' This court would not readily lean to favor a restricted construction of language as applied to the provisions of a treaty, which always combines the characteristics of a contract as well as a law; but it is not necessary to examine the grounds of these doubts as applied to the present case, because this treaty has been enforced by the provisions of the Act of Congress of the 14th of June, 1797, so as to leave no doubt of its extension to the case of cruising against Spain under a commission from the new states formed in her colonies."

The third section of the Act of 1818 was directly before this Court in a criminal case in 1832.

Only once has a proceeding directly to enforce the section come before this court and that was in a criminal case. United States *vs.* Quincy, 6 Pet. 445. The Court say (p. 464):

"The instruction which ought to be given to the jury under these prayers involves the construction of the act of Congress touching the extent to which the preparation of the vessel for cruising or committing hostilities must be carried before she leaves the limits of the United States, in order to bring the case within the act.

"On the part of the defendant it is contended, that the vessel must be fitted out and armed, if not complete, so far at least as to be prepared for war, or in a condition to commit hostilities.

"We do not think this is the true construction

of the act. It has been argued that, although the offense created by the act is a misdemeanor, and there cannot, legally speaking, be principal and accessory, yet the act evidently contemplates two distinct classes of offenders. The principal actors, who are directly engaged in preparing the vessel, and another class, who, though not the chief actors, are in some way concerned in the preparation.

. . . . . .

"To bring him within the words of the act, it is not necessary to charge him with being concerned in fitting out and arming. The words of the act are, fitting out or arming. Either will constitute the offense. But it is said such fitting out must be of a vessel armed and in a condition to commit hostilities, otherwise the minor actor may be guilty when the greater would not. For, as to the latter, there must be a fitting out and arming in order to bring him within the law. If this construction of the act be well founded, the indictment ought to charge, that the defendant was concerned in fitting out the '*Bolivar,*' *being a vessel fitted out and armed, etc.* But this, we apprehend, is not required. It would be going beyond the plain meaning of the words used in defining the offense. It is sufficient if the indictment charges the offense in the words of the act; and it cannot be necessary to prove what is not charged. It is true, that, with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary that they should be charged with fitting out and arming. These words may require that both should concur; and the vessel be put in a condition to commit hostilities, in order to bring her within the law. But an *attempt* to fit out and arm is made an offense. This is certainly doing something short of a complete fitting out and arming. To attempt to do an act does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it. Any effort or endeavor to effect it will satisfy the terms of the law."

"This varied phraseology in the law was probably employed with a view to embrace all persons, of every description, who might be engaged, directly or indirectly, in preparing vessels with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged. Hence the great latitude given to the courts in affixing the punishment, viz., a fine not more than ten thousand dollars and imprisonment not more than three years.

"We are, accordingly, of opinion that it is not necessary that the jury should believe or find that the 'Bolivar,' when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment."

This court held the word "people" as applied to a recognized government doubtful and obscure but cured by the videlicet in the same case.

"The second and third instructions, asked on the part of the United States, ought also to be given; for, if the jury shall find (as the instructions assume) that the defendant was knowingly concerned in fitting out the 'Bolivar' within the United States, with the intent that she should be employed as set forth in the indictment, that intention being defeated by what might afterwards take place in the West Indies, would not purge the offense, which was previously consummated. It is not necessary that the design or intention should be carried into execution in order to constitute the offense.

"The last instruction or opinion asked on the part of the defendant was:

"'That according to the evidence in the cause, the United Provinces of Rio de la Plata is, and was, at the time of the offense alleged in the indictment, a government acknowledged by the United States, and

thus was a *state* and not a *people*, within the meaning of the act of Congress, under which the defendant is indicted; the word *people* in that act being intended to describe communities under an existing government, not recognized by the United States, and that the indictment, therefore, cannot be supported on this evidence.'

"The indictment charges that the defendant was concerned in fitting out the 'Bolivar' with intent that she should be employed in the service of a foreign people; that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence, that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation by the Executive Department of the Government of the United States, before the year 1827. And, therefore, it is argued that the word *people* is not properly applicable to that nation or power.

"The objection is one purely technical, and we think not well-founded. The word *people*, as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of Congress to a foreign power. The words are: 'In the service of any foreign prince or state; or of any colony, district, or *people*.' The application of the word *people* is rendered sufficiently certain by what follows under the videlicet, 'that is to say, the United Provinces of Rio de la Plata.' This particularizes that which by the word *people* is left too general. The descriptions are no way repugnant or inconsistent with each other, and may well stand together. That which comes under the videlicet, only serves to explain what is doubtful and obscure in the word *people*."

The reasoning of the court in its construction and application of the acts for the suppression of the Slave Trade in civil proceedings for the forfeiture of ships is interesting and instructive.

In the case of the Emily and Caroline, 9 Wheat. 386, the vessels were libelled under the Slave Trade Act and the court speaking of that act says:

> "The first branch of the prohibiting part of this section is very broad and comprehensive, using various terms appropriate to the preparation for a voyage: 'Shall not build, fit, equip, load or otherwise prepare any ship,' etc. In the forfeiting part of the section these various terms are not repeated, but doubtless intended to be coextensive and included under the words *so fitted out as aforesaid.* Under this law then the forfeiture is incurred either by fitting out, or in other words, preparing a vessel, within the United States; or by causing a vessel to sail from the United States, for the purpose of carrying on the slave trade; two distinct acts either of which draws after it the same consequence, the forfeiture of the vessel. . . . In admiralty proceedings a libel in the nature of an information does not require all the formality and technical precision of an indictment at common law. If the allegations are such as plainly and distinctly to mark the offense it is all that is necessary. . . .
>
> "The object in view by the section of the law now under consideration was to prevent the preparation of vessels in our own ports which were intended for the slave trade. Hence is connected with this preparation whether it consists in building, fitting, equipping or loading, the purpose for which the act is done. *The law looks at the intention and furnishes authority to take from the offender the means designed for the perpetration of the mischief.* This is not punishing criminally the intention merely; it is the preparation of the vessel and the purpose for which she is to be employed, that constitute the offense and draws after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they

> are made, the right of seizure attaches. To apply the construction contended for on the part of the claimant, that the fitting or preparation must be complete and the vessel ready for sea before she can be seized, would be rendering the law in a great measure nugatory and enable offenders to elude its provisions in the most easy manner."

And again, alluding to the evidence:

> "There was no attempt whatever by the claimant to explain the object of these particular fitments or to show that the destination of the vessels was other than that of the slave trade. Nor has his counsel on the argument here set up for him any such pretence. We may, therefore, safely conclude that the purpose for which these vessels were fitting was the slave trade; and, if so, the right of seizure attached. We can discover no sound reason for delaying the seizure until the vessels were on the point of sailing. It could only be necessary to render more certain from their complete fitment the purpose for which they were to be employed, and, if that be satisfactorily ascertained at an earlier stage of the preparation, the delay would be useless, and evasion of the law rendered almost certain."

The President's Second Proclamation of Neutrality specially refers to the decision of this Court in Wiborg vs. The United States.

The duty of the Executive is to execute the laws of the United States, and in so doing to follow the construction of those laws by the judiciary. This familiar constitutional maxim is accentuated by the President's last neutrality proclamation.

On the 27th of July, 1896, the President issued his proclamation referring to the previous proclamation of June 12, 1895, and to the fact that since the date of the said proclamation *the neutrality laws of the United States have been the*

subject of authoritative exposition by the judicial tribunal of last resort, this reference being to the decision of this court in the case of Wiborg *vs.* the United States, 163 U. S., pp. 632–647, a case arising under Section 5286.

The preamble of the proclamation of July, 1896, thus continues:

> "Whereas there is reason to believe that citizens of the United States, and others within their jurisdiction, fail to apprehend the meaning and operation of the neutrality laws of the United States, *as authoritatively interpreted as aforesaid*, and may be misled into participation in transactions which are violations of said laws, and will render them liable to the severe penalties provided for such violations.
>
> "Now, therefore, that the laws above referred to as judicially construed may be duly executed, *that the international obligations of the United States may be fully satisfied*, and that their citizens and all others within their jurisdiction, being seasonably apprised of their legal duty in the premises, may abstain from disobedience to the laws of the United States and thereby escape the *forfeitures* and penalties legally consequent thereon."

In the previous proclamation of June 12, 1895, there was a summary of the prohibitions contained in the laws of the United States, in which it is stated amongst other things that citizens of the United States, as well as others being within and subject to their jurisdiction, are prohibited—

> "*from taking part in such disturbances adverse to such established government* . . . by fitting out or arming, or procuring to be fitted out and armed, ships of war for such service."

Undoubtedly the laws of the United States do contain the prohibition above stated, but they also contain other provisions not fully covered by the recitals of the proclamation of 1895. The judicial exposition of the meaning of Section 5286 by the Supreme Court of the United States has been

considered by the President a matter of sufficient importance to warrant his second proclamation, calling attention to that judicial construction. In the second proclamation as above quoted he warns citizens and others within the United States not only to avoid penalties, which is all that the Section 5286 imposes in the way of punishment, but also *forfeitures.* The section of the neutrality laws which provides for forfeitures is Section 5283, which provides for the *forfeiture of vessels, their tackle, apparel and furniture, together with all materials, arms, munitions, and stores, which may have been procured for the building and equipment thereof.*

Section 5283 has been construed and forfeitures decreed in three different Districts in the case of unrecognized insurgents, and where the ships were not technically ships of war.

This section has also been the subject of authoritative judicial exposition, not, it is true, by the judicial tribunal of last resort, but by three courts of competent jurisdiction, district courts of the United States, in three different States of the Union, each in the cases of insurgents unrecognized as belligerents.

Reference is made to the case of the Mary N. Hogan, 18 Federal Reporter, page 529, where a forfeiture under Section 5283 was decreed by Judge Brown in the District Court of the United States for the Southern District of New York, on the 23d of November, 1883, of a—

> "steam tug, of about 37 tons register, 90 feet long, and 20 feet beam, and 9 feet depth of hold, built for ordinary towing service about the harbor of New York, in no respect distinguishable by any peculiarities from the numerous other tugs of her class in this port."

Also to the cases of The United States *vs.* 214 Boxes of Arms, etc., and the United States *vs.* 140 Kegs of

Gunpowder, 20 Federal Reporter, page 50, in which Judge Hughes, in the District Court of the United States for the Eastern District of Virginia, on the 4th day of February, 1884, decreed two forfeitures under Section 5283 of the Revised Statutes of the United States, of the arms and munitions provided for the same hostile expedition proceeded against in the above cause. The third proceeding referred to is the case of the "City of Mexico," 28 Federal Reporter, page 148, in which Judge Locke, in the District Court of the United States for the Southern District of Florida, decreed a forfeiture, under Section 5283, of the ship "City of Mexico," not as an armed vessel, but as a vessel furnished and fitted out with intent that such vessel shall be employed to *commit hostilities*.

In the three proceedings above mentioned both the ships and the munitions of war were valuable, but the owners, whoever they were, prosecuted no appeal from the decisions of the district courts, which therefore not only disposed of the right of private property by forfeiting the vessels and materials, under the provisions of Section 5283, but remain, until a different construction be announced by a higher court, as authoritative judicial constructions of the meaning of that section.

All these cases were proceedings in admiralty, tried and determined by the court without the aid of a jury. Neither the Government of the United States, which filed the libel in rem, nor the claimants, who sought to assert their rights of property to prevent a forfeiture, had any right under the Constitution and laws of the United States to a trial by jury.

The Act of 1845, which permitted a jury in certain cases in admiralty now incorporated in Section 566, R. S., was limited to "causes of admiralty and maritime jurisdiction, relating to any matter of contract or tort," and the same section had already provided that the trial of issues of fact in the District courts in all cases, *except cases in equity and cases of admiralty and maritime jurisdiction, shall be by jury.*" The forfeiture of vessels by proceedings in admiralty on the

instance side of the court have been sought and decreed under the laws for the suppression of the slave trade (United States *vs.* "The Sally," 2nd Cranch, 406), under the non-intercourse laws (United States *vs.* Betsey and Charlotte, 4th Cranch, 443), under the laws in regard to seal fishing in Alaska (The W. P. Sayard ex parte Cooper, 143 United States; The Silvia Handy, ditto), under the custom laws, Sections 2868 and 3109 (United States *vs.* Coquitlan, District court of Alaska, 1893), and under the Navigation Laws, Section 4179.

The Mary N. Hogan.

In the opinion on the merits (18 F. R., p. 529) Judge Brown says:

> "*From the evidence it clearly appears that though the 'Hogan' was wholly unadapted to effective naval operations against any considerable organized opposition, she could be of the greatest service to the insurgents by her light draft and considerable speed in landing or taking off men at unprotected points of the coast of Hayti,* by watching her opportunities of running in and out, as well as in offensive demonstrations against defenseless parts of the islands, with little to fear from the slight naval resources of the lawful government."

After completing the review of the testimony the learned judge continues:

> "The only rational inference that can be drawn from the above facts is that the 'Hogan' was designed to be used for the conveyance of arms and ammunition in aid of the insurrectionists in Hayti, and for other aid, and such hostile demonstrations as she was fit to make against the defenseless parts of the coast."

Later the judge speaks of the pretence that the "Hogan" was destined upon a legitimate business as: "only a cover

for departure upon a *hostile expedition*," and finally concludes that the evidence established—

> "a *hostile* expedition organized and dispatched from our ports in separate parts, to be united at the common rendezvous on the high seas, and to proceed thence to Hayti in completion of the original *hostile* purpose with which the different parts were dispatched from our shores. Such an expedition is as much within the prohibition of Section 5283 of the Revised Statutes as if all its parts were united and complete upon one single vessel. . . . A decree for the condemnation of the 'Mary N. Hogan' must therefore be awarded."

United States vs. 140 Kegs of Powder.—United States vs. 214 Boxes of Arms.

The case of the District Court of the United States for the Eastern District of Virginia, 20 Federal Reporter, page 50 was with reference to the very arms and ammunition which were to have been placed on board the "Mary N. Hogan,' which were seized in the port of Richmond on board the schooner "E. G. Erwin."

Judge Hughes, in his opinion in the two cases against the Boxes of Arms and Kegs of Powder, says:

> "The two proceedings are founded upon Section 5283 of the Revised Statutes of the United States, which, so far as applicable, to this case provides, that every person who, within the limits of the United States, attempts to fit out and arm, or is knowingly concerned in the furnishing, fitting out or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign people to cruise or commit hostilities against the citizens of any foreign state with which the United States are at peace, shall be punished as provided by law; and that all the materials, arms and ammunition which may have been procured for the equipment of such a vessel shall be forfeited."

Speaking of the material facts with relation to the " Mary N. Hogan," which were, of course, part of the evidence for condemnation, in regard to the arms the learned judge continues:

> " I probably have a right to regard that part of the case before me as res judicata; but feeling disposed, in the cases at bar, to consider the question of the character and destination of the ' Hogan ' as an original one, I have gone anxiously and thoroughly over all the voluminous evidence before me on that subject, and find myself constrained to adopt precisely the conclusions that were reached by Judge Brown, and are set forth in his opinion in that case."

To the searching analysis of the facts applied by Judge Brown in the case of the " Hogan," Judge Hughes adds the following:

> " The ' Hogan ' bore less than two feet of freeboard. A cargo of 20 or 30 tons, which was the weight of these munitions, would have put down her deck to within 12 inches of the water. Even on a smooth July sea, a voyage to the West Indies would have been a desperate commercial venture, and yet we hear nothing of insurance either upon vessel or cargo. Commercially, the enterprise would have been reckless. As a military venture it was no more desperate than military raids usually are, especially upon the high seas."

Again,

> " The general test of contraband as to neutrals is whether the contraband goods are intended for sale in a neutral market, or whether the direct and intended object is to supply the enemy with them. . In the case at bar the question is in different form, while the principle is identical. It concerns the furnishing, fitting out, and arming, in a neutral jurisdiction, of a vessel about to proceed directly to the theatre of hostilities, and to engage in military operations. ' The Hogan ' as already concluded,

was intended for such a purpose, and on receiving these arms was intended to be directly bound to the waters of Hayti. These military goods were not to be taken to a neutral port to be sold in open market; they were not for sale at all; they were intended to be used on that steam tug in flagrant hostilities. When they left Frazer's warehouse they ceased to be articles of commerce. They were no longer for sale. They were to be put in a covert and deceptive manner upon a vessel at sea, and to constitute her outfit for engaging in hostilities against a state with which the United States are at peace. It is useless to cite legal authorities on this subject. The law is in the form of an express statute. Its principles are plain and elementary, and need only to be stated to be comprehended and approved." . . .

"It is useless for me to reiterate what has so often been ruled in principle, that the placing of these goods directly on the 'Hogan' by those knowingly concerned in fitting out that vessel, was not necessary to justify the condemnation of the goods. If they had passed through the hands of many draymen, and other intermediaries, and over many decks, before reaching the vessel whose outfit and armament they were intended to be, that ultimate destination made them guilty goods, and subjected them to condemnation."

"I will sign a decree of condemnation and sale in both of these cases."

The City of Mexico.

In the case of the "City of Mexico," 28 Federal Reporter, page 148, Judge Locke, in the District Court of the United States for the Southern District of Florida, thus recites the allegations of the libel:

"The libel for forfeiture alleges that certain persons were knowingly concerned in the furnishing and fitting out of said vessel, with the intent that she should be employed to cruise or commit hostilities

against the people of the State of Honduras, with whom the United States is at peace." . . .

"The terms 'furnishing' and 'fitting' have no legal or technical meaning which requires a construction different from the ordinary acceptation in maritime and commercial parlance, which is to supply with anything necessary or needful. That by the furnishing and fitting out is intended something different from the arming, is not only apparent from the language of the statute, but it has been judicially determined in United States *vs.* Quincy, 6 Peters, 445. This vessel was furnished and fitted out, in the usual acceptation of the terms, provided with the necessary supplies, and put in a condition for proceeding to sea, within the United States. Whether she was well furnished or thoroughly fitted out is not the question, if she was so supplied as to proceed on her way. She was furnished with the ordinary engineer's supplies and steward's stores, and sailed from New York the 22d of December, 1885. What was the intent with which she was fitted out, and either dispatched or taken on her way by the parties in charge, becomes a most important and difficult question, involving conclusions both of law and fact.

"Whatever may have been the intention of the legislators regarding the particular class of hostilities they were desired to prevent, all we have to decide from is the language with which they have clothed their ideas, and this is broad enough to include all classes of hostilities. It has been ably argued that unless the vessel is so armed that she herself can be the offending party or thing, or, in other words, carries such an armament as can throw projectiles from her port, or is equipped as a man-of-war or armed vessel, the statute will not apply. The terms 'peaceful' and 'warlike,' 'friendly' and 'hostile,' are thoroughly recognized; and the line so plainly marked between what should be the course and conduct of a vessel engaged in a peaceful commercial venture, and one fitted, prepared, and intended for hostilities, is so distinct and well defined as to permit no mistake, nor require a reference to a judicial decision.

> "A peaceful act, a peaceful voyage, cannot be a hostile one; nor can acts looking towards war or enmity escape from the general term 'hostilities.' It is true that vessels may frequently be engaged in transporting troops as passengers, and war material as freight, without themselves having any connection with the actual hostilities contemplated, so that their voyages in no way partake of the nature of hostile acts, nor they be liable to be charged with the commission of hostilities. The 'Lafayette' and 'Ville de Paris,' cited in Hall, Int. Law, 564. Or where troops, conveyed as passengers only, are landed as such, although bound on a hostile expedition, where all connection and relation existing between them and the vessel are to be terminated at their leaving her side, the question becomes one of more difficulty. . . . A vessel is a passive instrument, and is but made the means of success; and it matters but little, in the effect of her hostilities, whether she throw shot and shell from her ports, *or dispatched boat-loads of armed men from her gangways.*"

In the case of the "City of Mexico" the pretence was that she was bound on a peaceful and legitimate voyage connected with a scheme of colonization. The learned judge, after reviewing the circumstances, concludes:

> "The whole character of the voyage shows it was not a commercial one. No cargo was taken, no cargo looked for—only arms and ammunition, which are not the implements of peaceful colonization or agriculture. The arms were not shipped or to be received for sale as a financial speculation. There was no war in that part of the world going on or in contemplation, except what was intended by General Delgado, for whom they were intended. I can arrive at but one conclusion: *that acts of hostility were contemplated and intended at the time of furnishing and fitting out the 'City of Mexico,'* in which she was to take an active part, and that it was intended that she should receive arms and ammunition, and, in the language of the statutes, *she should commit hostilities.*
>
> "The decree of forfeiture must follow."

CONCLUSION.

The undersigned has endeavored to place at the disposition of the Court such aid as he could afford for a consideration of this cause, not only as to the application of the section to the insurgents in Cuba, and to the propriety of the release of the vessel on boud, but also as to the construction of the statute in case the course of the argument or the Courts' consideration should lead in that direction.

Repectfully submitted.

CALDERON CARLISLE,
Amicus Curiæ.

Memorandum as to Oral Arguments.

On February 15, 1897, the Supreme Court of the United States met in pursuance of its order of February 1st, 1897, for the purpose of hearing oral argument in the case on the merits.

The case was opened by the Honorable Edward B. Whitney, Assistant Attorney General, in behalf of the United States, who was followed by William Hallett Phillips, Esquire, and A. W. Cockrell, Esquire, counsel for the claimants of the vessel, and thereupon the argument was closed and the case submitted by the Honorable Judson Harmon, Attorney General of the United States, in behalf of the United States.

Opinion of the Supreme Court of the United States, by Fuller, Chief Justice, Rendered March 1, 1897.

United States
vs.
Steamer "Three Friends."

The steamer "Three Friends" was seized November 7, 1896, by the collector of customs for the district of St. Johns, Florida, as forfeited to the United States under Section 5283 of the Revised Statutes, and, thereupon, November 12, was libelled on behalf of the United States in the district court for the southern district of Florida.

The first two paragraphs of the libel alleged the seizure and detention of the vessel, and the libel then continued:

"Third. That the said steamboat or steam vessel, the 'Three Friends,' was on, to wit, on the twenty-third day of May, A. D. 1896, furnished, fitted out, and armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the Government of the King of Spain in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain, in the island of Cuba with whom the United States are and were at that date at peace.

"Fourth. That the said steamboat or steam vessel, 'Three Friends,' on, to wit, on the twenty-third day of May, A. D. 1896, whereof one Napoleon B. Broward was then and there master, and within the said southern district of Florida, was then and there fitted out, furnished, and armed, with intent that said vessel, the said 'Three Friends,' should be employed in the service of a certain people, to wit, the insurgents in the island of Cuba, otherwise called the Cuban

revolutionists, to cruise and commit hostilities against the subjects, property, and people of the King of Spain, in the said island of Cuba, with whom the United States are and were then at peace.

"Fifth. That the said steamboat or steam vessel 'Three Friends,' on, to wit, on the twenty-third day of May, A. D. 1896, and whereof one N. B. Broward was then and there master, within the navigable waters of the United States, and within the southern district of Florida and the jurisdiction of this court, was then and there, by certain persons to the attorneys of the said United States unknown, furnished, fitted out, and armed, being loaded with supplies and arms and munitions of war, and it, the said steam vessel, 'Three Friends,' being then and there furnished, fitted out, and armed with one certain gun or guns, the exact number to the said attorneys of the United States unknown, and with munitions of war thereof, with the intent, then and there to be employed in the service of a certain people, to wit, certain people then engaged in armed resistence to the Government of the King of Spain in the island of Cuba, and with the intent to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the said island of Cuba, and who, on the said date and day last aforesaid, and being so furnished, fitted out and armed as aforesaid, then and there aforesaid, from the navigable waters of the United States, to wit, from the St. Johns River, within the southern district of Florida, and within the jurisdiction of this court aforesaid, proceeded upon a voyage to the island of Cuba aforesaid, with the intention aforesaid, contrary to the form of the statute in such case made and provided. And that by force and virtue of the acts of Congress in such case made and provided, the said steamboat or steam vessel, her tackle, engines, machinery, apparel, and furniture became and are forfeited to the use of the said United States.

"Sixth. And the said attorneys say that by reason of all and singular the premises aforesaid, and that by force of the statute in such case made and provided, the aforesaid and described steamboat or steam vessel, 'Three Friends,' her tackle, machinery, apparel, and furniture, became and are forfeited to the use of the said United States."

And concluded with a prayer for process and monition and the condemnation of the vessel as forfeited. Attachment and monition having issued as prayed, Napoleon B. Broward and Montcalm Broward, master and owners, intervened as claimants; applied for an appraisement of the vessel and her release on stipulation; and filed the following exceptions to the libel:

"1. Sec. 5283, for an alleged violation of which the said vessel is sought to be forfeited, makes such forfeiture dependent upon the conviction of a person for doing the act or acts denounced in the first sentence of said section, and as a consequence of conviction of

such person; whereas the allegations in said libel do not show what persons had been guilty of the acts therein denounced as unlawful.

"2. The said libel does not show the 'Three Friends' was fitted out and armed, attempted to be fitted out and armed, or procured to be fitted out and armed in violation of said section.

"3. The said libel does not show the said vessel was so fitted out and armed, or so attempted to be fitted out and armed, or so procured to be fitted out and armed or furnished, with the intent that said vessel should be employed in the service of a foreign prince, or state, or of a colony, district, or people with whom the United States are at peace.

"4. The said libel does not show by whom said vessel was so fitted out.

"5. Said libel does not show in the service of what foreign prince, or state, or colony, or district, or body politic the said vessel was so fitted out.

"6. The said libel does not show that said vessel was so armed or fitted out or furnished with the intent that such vessel should be employed in the service of any body politic recognized by or known to the United States as a body politic."

The vessel was appraised at $4,000 and a bond on stipulation given for $10,000, upon which she was directed to be released. The cause came on to be heard upon the exceptions to the libel, and on January 18 the following decree was entered:

"This cause coming on to be heard upon exceptions to the libel and having been fully heard and considered, it is ordered that said second, third, fifth and sixth exceptions be sustained and that the libellant have permission to amend said libel, and in event said libel is not so amended within ten days the same stand dismissed and the bond herein filed be canceled."

From this decree the United States, on January 23, prayed an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, which was allowed and duly prosecuted.

The following errors were assigned:

"First. For that the court over the objection of the libellants allowed the said steam vessel 'Three Friends' to be released from custody upon the giving of bond.

"Second. For that the court erred in sustaining the 2d, 3d, 5th and 6th exceptions of the claimants to the libel of information of the libellants.

"Third. For that the court erred in entering a decree dismissing the libel of information herein."

On February 1 application was made to this court for a writ of *certiorari* to bring up the cause from said Circuit Court of Appeals, and, having been granted and sent down, the record was returned accordingly.

Mr. Chief Justice FULLER delivered the opinion of the Court:

It is objected that the decree was not final, but inasmuch as the libel was ordered to stand dismissed if not amended within ten days, the prosecution of the appeal, within that time, was an election to waive the right to amend and the decree of dismissal took effect immediately.

In admiralty cases, among others enumerated, the decree of the circuit court of appeals is made final in that court by the terms of Section 6 of the Judiciary Act of March 3, 1891, but this court may require any such case, by *certiorari* or otherwise, to be certified "for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court," that is, as if it had been brought directly from the district or the circuit court. 26 Stat. 826, c. 517, Section 6.

Accordingly the writ of *certiorari* may be issued in such cases to the circuit court of appeals, pending action by that court, and, although this is a power not ordinarily to be exercised, American Construction Co. *vs.* Jacksonville Railway, 148 U. S. 372, 385, we were of opinion that the circumstances justified the allowance of the writ in this instance, and the case is properly before us.

We agree with the district judge that the contention that forfeiture under Section 5283 depends upon the conviction of a person or persons for doing the acts denounced is untenable. The suit is a civil suit *in rem* for the condemnation of the vessel only, and is not a criminal prosecution. The two proceedings are wholly independent and pursued in different courts, and the result in each might be different. Indeed, forfeiture might be decreed if the proof showed the prohibited acts were committed though lacking as to the identity of the particular person by whom they were committed. "The Palmyra," 12 Wheat. 1; the "Ambrose Light," 25 Fed. Rep. 408; the "Meteor," 17 Fed. Cas. 178.

The "Palmyra" was a case of a libel of information against the vessel to forfeit her for a piratical aggression, under certain acts of Congress which made no provision for the personal punishment of the offenders, but it was held that, even if such provision had been made, conviction would not have been necessary to the enforcement of forfeiture. And Mr. Justice Story, delivering the opinion, said: "It is well-known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the Crown. The forfeiture did not, strictly speaking, attach *in rem*; but it was a part, or at least a consequence, of the judgment of conviction. It is plain from this statement, that no right to the goods and chattels of the felon could be acquired by the Crown by the mere commission of the offense; but the right attached only by the conviction of the offender. The necessary result was, that in every case where the Crown sought to recover such goods and chattels, it was indispensable to establish its right by producing the record of the judgment of conviction. In the contemplation of the common law, the

offenders right was not devested until the conviction. doctrine never was applied to seizures and forfeitures, created by statute *in rem*, cognizable on the revenue side of the exchequer. The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing; and this whether the offense be *malum prohibitum* or *malum in se*. The same principle applies to proceedings *in rem*, on seizures in the admiralty. Many cases exist where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personam*. Many cases exist where there is both a forfeiture *in rem* and a personal penalty. But in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been and so this court understands the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by, any criminal proceeding *in personam*." And see the "Malek Adhel," 2 How. 210; United States *vs.* "The Little Charles," 1 Brock. 347.

The libel alleged that the vessel was "furnished, fitted out and armed, with intent that she should be employed in the service of a certain people, to wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace."

The learned district judge held that this was insufficient under Section 5283, because it was not alleged "that said vessel had been fitted out with intent that she be employed in the service of a foreign prince or state, or of any colony, district or people recognized as such by the political power of the United States."

In Wiborg *vs.* United States, 163 U. S. 632, which was an indictment under Section 5286, we referred to the eleven sections from 5281 to 5291, inclusive, which constitute Title LXVII of the Revised Statutes, and said: "The statute was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency," and the consideration of the present case arising under Section 5283 confirms us in the view thus expressed.

It is true that in giving a resume of the sections, we referred to Section 5283 as dealing "with fitting out and arming vessels in this country in favor of one foreign power as against another foreign power with which we are at peace," but that was matter of general description, and the entire scope of the section was not required to be indicated.

The title is headed "Neutrality," and usually called by way of convenience the "Neutrality Act," as the term "Foreign Enlistment Act" is applied to the analogous British statute, but this does not operate as a restriction.

Neutrality, strictly speaking, consists in abstinence from any participation in a public, private, or civil war, and in impartiality of conduct toward both parties, but the maintenance unbroken of peaceful relations between two powers when the domestic peace of one of them is disturbed is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency. And, as mere matter of municipal administration, no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while good faith towards friendly nations requires their prevention.

Hence, as Mr. Attorney General Hoar pointed out, 13 Op. 178, though the principal object of the act was "to secure the performance of the duty of the United States, under the law of nations, as a neutral nation in respect of foreign powers," the act is nevertheless an act "to punish certain offenses against the United States by fines imprisonment, and forfeitures, and the act itself defines the precise nature of those offenses."

These sections were brought forward from the Act of April 20, 1818 (3 Stat. 447, Ch. 88), entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned," which was derived from the Act of June 5, 1794 (1 Stat. 381, Ch. 50), entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States,'" and the Act of March 3, 1817 (3 Stat. 370, Ch. 58), entitled "An act more effectually to preserve the neutral relations of the United States."

The Piracy Act of March 3, 1819 (3 Stat. 510, Ch. 77; Rev. Stat., Sections 4293, 4294, 4295, 4296, 5368), supplemented the Acts of 1817 and 1818.

The Act of 1794, which has been generally recognized as the first instance of municipal legislation in support of the obligations of neutrality, and a remarkable advance in the development of international law, was recommended to Congress by President Washington in his annual address on December 3, 1793; was drawn by Hamilton; and passed the Senate by the casting vote of Vice-President Adams. Ann. 3d Cong. 11, 67. Its enactment grew out of the proceedings of the then French minister, which called forth President Washington's proclamation of neutrality in the spring of 1793. And though the law of nations had been declared by Chief Justice Jay, in his charge to the grand jury at Richmond, May 22, 1793 (Wharton's State Trials, 49, 56), and by Mr. Justice Wilson, Mr. Justice Iredell and Judge Peters, on the trial of Henfield in July of that year, (Id. 66, 84) to be capable of being enforced in the courts of the United States criminally, as well as civilly, without further legislation, yet it was deemed advisable to pass the act in view of the controversy over that position, and moreover, in order to

provide a comprehensive code in prevention of acts by inc... within our jurisdiction inconsistent with our own authority, as well as hostile to friendly powers.

Section 5283 of the Revised Statutes is as follows:

"Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities aginst the subjects, citizens, or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

By referring to Section 3 of the Act of June 5, 1794, Section 1 of the Act of 1817, and Section 3 of the Act of 1818, which are given in the margin*, it will be seen that the words "or of any

*Act of June 5, 1794: "SEC. 3. That if any person shall within any of the ports, harbors, bays, rivers or other waters of the United States, fit out and arm or attempt to fit out and arm or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars and the term of imprisonment shall not exceed three years, and every such ship or vessel with her tackle, apparel and furniture together with all materials, arms, ammunition and stores which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of any person who shall give information of the offense, and the other half to the use of the United States."

Act of March 3, 1817: "That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming, of any such ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people to cruise or commit hostilities, or to aid or cooperate in any warlike measure whatever, against the subjects, citizens, or property, of any prince or state, or of any colony, district or people with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined

colony, district, or people" were inserted in the original law by the Act of 1817, carried forward by the Act of 1818, and so into Section 5283.

The immediate occasion of the passage of the Act of March 3, 1817, appears to have been a communication under date of December 20, 1816, from the Portuguese minister to Mr. Monroe, then Secretary of State, informing him of the fitting out of privateers at Baltimore to act against Portugal, in case it should turn out that that government was at war with the "self-styled government of Buenos Ayres," and soliciting "the proposition to Congress of such provisions of law as will prevent such attempts for the future." On December 26, 1816, President Madison sent a special message to Congress, in which he referred to the inefficacy of existing laws "to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States," and, "with a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States," recommended further legislative provisions. This message was transmitted to the minister December 27, and he was promptly officially informed of the passage of the act in the succeeding month of March. Geneva Arbitration, Case United States, 138. In Mr. Dana's elaborate note to Section 439 of his edition of Wheaton, it is said that the words "colony, district, or people" were inserted on the suggestion of the Spanish minister that the South American provinces in revolt and not recognized as independent might not be included in the word "state." Under the

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and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information, and the other half to the use of the United States."

Act of April 20, 1818: Section 3. That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

circumstances this act was entitled as "to preserve the neutral relations of the United States," while the title of the Act of 1794 described it as "in addition" to the Crimes Act of April 30, 1790 (1 Stat. 112, Ch. 9), and the Act of 1818 was entitled in the same way. But there is nothing in all this to indicate that the words "colony, district or people" had reference solely to communities whose belligerency had been recognized, and the history of the times, an interesting review of which had been furnished us by the industry of counsel, does not sustain the view that insurgent districts or bodies, unrecognized as belligerents, were not intended to be embraced. On the contrary, the reasonable conclusion is that the insertion of the words "district, or people" should be attributed to the intention to include such bodies, as for instance, the so-called Oriental Republic of Artigas, and the governments of Petion and Christophe, whose attitude had been passed on by the courts of New York more than a year before in Gelston *vs.* Hoyt, 13 Johns. 141, 561, which was then pending in this court on writ of error. There was no reason why they should not have been included, and it is to the extended enumeration as covering revolutionary bodies laying claim to rights of sovereignty, whether recognized or unrecognized, that Chief Justice Marshall manifestly referred in saying, in "The Gran Para," 7 Wheat. 471, 489, that the Act of 1817 "adapts the previous laws to the actual situation of the world." At all events, Congress imposed no limitation on the words "colony, district, or people," by requiring political recognition.

Of course a political community whose independence has been recognized as a "state," under the act; and, if a body embarked in a revolutionary political movement, whose independence has not been, but whose belligerency has been, recognized, is also embraced by that term, then the words "colony, district, or people," instead of being limited to a political community which has been recognized as a belligerent, must necessarily be held applicable to a body of insurgents associated together in a common political enterprise and carrying on hostilities against the parent country, in the effort to achieve independence, although recognition of belligerency has not been accorded.

And as agreeably to the principles of international law and the reason of the thing, the recognition of belligerency, while not conferring all the rights of an independent state, concedes to the government recognized the rights, and imposes upon it the obligations, of an independent state in matters relating to the war being waged no adequate ground is perceived for holding that acts in aid of such a government are not in aid of a state in the sense of the statute.

Contemporaneous decisions are not to the contrary, though they throw no special light upon the precise question.

Gelston *vs.* Hoyt, 3 Wheat. 246, decided at February term, 1818 (and below January and February, 1816), was an action of trespass

against the collector and surveyor of the port of New York for seizing the ship "American Eagle," her tackle, apparel, &c. The seizure was made July 10, 1810, by order of President Madison under section three of the Act of 1794, corresponding to Section 5283. The ship was intended for the service of Petion against Christophe, who had divided the island of Hayti between them and were engaged in a bloody contest, but whose belligerency had not been recognized. It was held that the service of "any foreign prince or state" imported a prince or state which had been recognized by the government, and as there was no recognition in any manner, the question whether the recognition of the belligerency of a *de facto* sovereignty would bring it within those words, did not arise.

The case of "The Estrella," 4 Wheat. 298, involved the capture of a Venezuelan privateer on April 24, 1817. There was a recapture by an American vessel, and the prize thus came before the court at New Orleans for adjudication. The privateer was found to have a regular commission from Bolivar, issued as early as 1816, but it had violated Section 2 of the Act of 1794, which is the same as Section 2 of the Act of 1818, omitting the words "colony, district or people" (and is now Section 5282 of the Revised Statutes), by enlisting men at New Orleans, provided Venzuela was a state within the meaning of that act. The decision proceeded on the ground that Venezuela was to be so regarded on the theory that recognition of the belligerency made the belligerent to that intent a state.

In the "Nueva Anna and Liebre," 6 Wheat. 193, the record of a prize court at Galveztown, constituted under the authority of the Mexican Republic, was offered in proof, and this court refused to recognize the belligerent right claimed, because our government had not acknowledged "the existence of any Mexican Republic or state at war with Spain;" and in "The Gran Para," 7 Wheat. 471, Chief Justice Marshall refered to Beunos Ayres as a state within the meaning of the Act of 1794.

Even if the word "state" as previously employed admitted of a less liberal signification, why should the meaning of the words "colony, district or people," be confined only to parties recognized as belligerent? Neither of these words is used as equivalent to the word "state," for they were added to enlarge the scope of a statute which already contained that word. The statute does not say foreign colony, district or people, nor was it necessary, for the reference is to that which is part of the dominion of a foreign prince or state, though acting in hostility to such prince or state. Nor are the words apt if confined to a belligerent. As argued by counsel for the Government, an insurgent colony under the act is the same before as after the recognition of belligerency, as shown by the instance of the colony of Buenos Ayres and Paraguay, the belligerency of one having been recognized but not of the other, while the statute was plainly applicable to both. Nor is district an appropriate designation of a recognized power *de facto*, since such a power

would represent not the territory actually held but the [illegible] covered by the claim of sovereignty. And the word "people," when not used as the equivalent of state or nation, must apply to a body of persons less than a state or nation, and this meaning would be satisfied by considering it as applicable to any consolidated political body.

In United States *vs.* Quincy, 6 Pet. 445, 467, an indictment under the third section of the Act of 1818, the court disposed of the following, among other points, thus: "The last instruction or opinion asked on the part of the defendant was: That according to the evidence in the cause, the United Provinces of Rio de la Plata is, and was at the time of the offense alleged in the indictment, a government acknowledged by the United States, and thus was a *state* and not a *people* within the meaning of the act of Congress under which the defendant is indicted; the word *people* in that act being intended to describe communities under an existing government not recognized by the United States; and that the indictment therefore cannot be supported on this evidence.

"The indictment charges that the defendant was concerned in fitting out the "Boliver" with the intent that she should be employed in the service of a foreign people; that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation by the Executive Department of the Government of the United States, before the year 1827. And therefore it is argued that the word people is not properly applicable to that nation or power.

"The objection is one purely technical, and we think not well founded. The word people, as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of Congress to a foreign power. The words are, 'in the service of any foreign prince or state, or of any colony, district, or people.' The application of the word people is rendered sufficiently certain by what follows under the videlicet, 'that is to say, the United Provinces of Rio de la Plata.' This particularizes that which by the word people is left too general. The descriptions are no way repugnant or inconsistent with each other, and may well stand together. That which comes under the videlicit, only serves to explain what is doubtful and obscure in the word people."

All that was decided was that any obscurity in the word "people" as applied to a recognized government was cured by the videlicet.

Nesbitt *vs.* Lushington, 4 T. R. 783, was an action on a policy of insurance in the usual form, and among the perils insured against were "pirates, rovers, thieves," and "arrestes, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever." The vessel with a cargo of corn was driven into a port and was seized by a mob who assumed the government

of her and forced the captain to sell the corn at a low price. It was ruled that this was a loss by pirates, and the maxium *Noscitur a sociis* was applied by Lord Kenyon and Mr. Justice Buller. Mr. Justice Buller said: "'People' means 'the supreme power;' 'the power of the country,' whatever it may be. This appears clear from another part of the policy; for where the underwriters insure against the wrongful acts of individuals, they describe them by the names of "pirates, rogues, thieves;" then having stated all the individual persons, against whose acts they engage, they mention other risks, those occasioned by the acts of 'kings, princes, and people of what nation, condition, or quality soever.' Those words therefore must apply to 'nations' in their collective capacity."

As remarked in the brief of Messrs. Richard H. Dana, Jr., and Horace Gray, Jr., filed by Mr. Cushing in Mauran *vs.* Insurance Co., 6 Wall. 1, the words were "doubtless originally inserted with the view of enumerating all possible forms of government, monarchical, artistrocratical, and democratic."

The British Foreign Enlistment Act, 59 Geo. III, Ch. 69, was bottomed on the Act of 1818, and the seventh section, the opening portion of which is given below,* corresponded to the third section of that act. Its terms were, however, considerably broader and left less to construction. But we think the words "colony, district, or people" must be treated as equally comprehensive in their bearing here.

In the case of "The Salvador," L. R. 3 P. C. 218, the "Salvador" had been seized under warrant of the governor of the Bahama Islands and proceeded against in the vice admiralty court there for breach of that section, and was, upon the hearing of the cause, ordered to be restored, the court not being satisfied that the vessel was engaged, within the meaning of the section, in aiding parties in insurrection

*"That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out or arm, or attempt or endeavor to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting, out or arming of any Ship or Vessel with intent or in order that such Ship or Vessel shall be employed in the service of any Foreign Prince, State or Potentate, or of any Foreign Colony, Province or part of any Province or People, or of any Person or Persons exercising or assuming to exercise any powers of Government in or over any Foreign State, Colony, Province or part of any Province or People, as a Transport or Storeship, or with intent to cruise or commit hostilities against any Prince, State or Potentate, or against the subjects or citizens of any Prince, State or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province or part of any Province or Country, or against the inhabitants of any Foreign Colony, Province or part of any Province or Country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, Territory, Island or place belonging or subject to His Majesty, issue or deliver any Commission for any Ship or Vessel, to the intent that such Ship or Vessel shall be employed as aforesaid," &c., &c.

against a foreign government, as such parties did not assume to exercise the powers of government over any portion of the territory of such government. This decision was overruled on appeal by the Judicial Committee of the Privy Council, and Lord Cairns, delivering the opinion, said: "It is to be observed that this part of the section is in the alternative. The ship may be employed in the service of a foreign prince, state, or potentate, or foreign state, colony, province, or part of any province or people; that is to say, if you find any consolidated body in the foreign state, whether it be the potentate, who has the absolute dominion, or the Government, or a part of the province or of the people, or the whole of the province or the people acting for themselves, that is sufficient. But by way of alternative it is suggested that there may be a case where, although you cannot say that the province, or the people, or a part of the province or people are employing the ship, there yet may be some person or persons who may be exercising, or assuming to exercise, powers of government in the foreign colony or state, drawing the whole of the material aid for the hostile proceedings from abroad; and, therefore, by way of alternative, it is stated to be sufficient, if you find the ship prepared or acting in the service of 'any person or persons exercising, or assuming to exercise, any powers of government in or over any foreign state, colony, province, or part of any province or people;' but that alternative need not be resorted to, if you find the ship is fitted out and armed for the purpose of being 'employed in the service of any foreign state or people, or part of any province or people.' . . .

"It may be (it is not necessary to decide whether it is or not) that you could not state who were the person or persons, or that there were any person or persons exercising, or assuming to exercise, powers of government in Cuba, in opposition to the Spanish authorities. That may be so; their lordships express no opinion upon that subject, but they will assume that there might be a difficulty in bringing the case within that second alternative of the section; but their lordships are clearly of opinion, that there is no difficulty in bringing the case under the first alternative of the section, because their lordships find these propositions established beyond all doubt—there was an insurrection in the island of Cuba; there were insurgents who had formed themselves into a body of people acting together, undertaking and conducting hostilities; these insurgents, beyond all doubt, formed part of the province or people of Cuba; and beyond all doubt the ship in question was to be employed, and was employed, in connection with and in the service of this body of insurgents."

We regard these observations as entirely apposite, and while the word "people" may mean the entire body of the inhabitants of a state; or the state or nation collectively in its political capacity; or the ruling power of the country; its meaning in this branch of the section, taken in connection with the words "colony" and "district,"

covers in our judgment any insurgent or insurrectionary "body of people acting together, undertaking and conducting hostilities," although its belligerency has not been recognized. Nor is this view otherwise than confirmed by the use made of the same words in the succeeding part of the sentence, for they are there employed in another connection, that is, in relation to the cruising, or the commission of hostilities, "against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace;" and, as thus used, are affected by obviously different considerations. If the necessity of recognition in respect of the objects of hostilities, by sea or land, were conceded, that would not involve the concession of such necessity in respect of those for whose service the vessel is fitted out.

Any other conclusion rests on the unreasonable assumption that the act is to remain ineffectual unless the government incurs the restraints and liabilities incident to an acknowledgment of belligerency. On the one hand, pecuniary demands, reprisals, or even war, may be the consequence of failure in the performance of obligations towards a friendly power, while on the other, the recognition of belligerency involves the rights of blockade, visitation, search and seizure of contraband articles on the high seas and abandonment of claims for reparation on account of damages suffered by our citizens from the prevalence of warfare.

No intention to circumscribe the means of avoiding the one by imposing as a condition the acceptance of the contingencies of the other can be imputed.

Belligerency is recognized when a political struggle has attained a certain magnitude and affects the interests of the recognizing power; and in the instance of maritime operations, recognition may be compelled, or the vessels of the insurgents, if molesting third parties, may be pursued as pirates. "The Ambrose Light," 25 Fed. Rep. 408; 3 Whart. Dig. Int. Law, Sec. 381; and authorities cited.

But it belongs to the political department to determine when belligerency shall be recognized, and its action must be accepted according to the terms and intention expressed.

The distinction between recognition of belligerency and recognition of a condition of political revolt, between recognition of the existence of war in a material sense and of war in a legal sense, is sharply illustrated by the case before us. For here the political department has not recognized the existence of a *de facto* belligerent power engaged in hostility with Spain, but has recognized the existence of insurrectionary warfare prevailing before, at the time, and since, this forfeiture is alleged to have been incurred.

On June 12, 1895, a formal proclamation was issued by the President and countersigned by the Secretary of State, informing the people of the United States that the island of Cuba was "the seat of

serious civil disturbances accompanied by armed resistance to the authority of the established government of Spain, a power with which the United States are and desire to remain on terms of peace and amity;" declaring that "the laws of the United States prohibit their citizens, as well as all others being within and subject to their jurisdiction, from taking part in such disturbances adversely to such established government, by accepting or exercising commissions for warlike service against it, by enlistment or procuring others to enlist for such service, by fitting out or arming or procuring to be fitted out and armed ships of war for such service, by augmenting the force of any ship of war engaged in such service and arriving in a port of the United States, and by setting on foot or providing or preparing the means for military enterprises to be carried on from the United States against the territory of such government;" and admonishing all such citizens and other persons to abstain from any violation of these laws.

In his annual message of December 2, 1895, the President said: "Cuba is again gravely disturbed. An insurrection, in some respects more active than the last preceding revolt, which continued from 1868 to 1878, now exists in a large part of the eastern interior of the island, menacing even some populations on the coast. Besides deranging the commercial exchanges of the island, of which our country takes the predominant share, this flagrant condition of hostilities, by arousing sentimental sympathy and inciting adventurous support among our people, has entailed earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty.

"Whatever may be the traditional sympathy of our countrymen as individuals with a people who seem to be struggling for larger autonomy and greater freedom, deepened as such sympathy naturally must be in behalf of our neighbors, yet the plain duty of their Government is to observe in good faith the recognized obligations of international relationship. The performance of this duty should not be made more difficult by a disregard on the part of our citizens of the obligations growing out of their allegiance to their country, which should restrain them from violating as individuals the neutrality which the nation of which they are members is bound to observe in its relations to friendly sovereign states. Though neither the warmth of our people's sympathy with the Cuban insurgents, nor our loss and material damage consequent upon the futile endeavors thus far made to restore peace and order, nor any shock our humane sensibilities may have received from the cruelties which appear to especially characterize this sanguinary and fiercely conducted war, have in the least shaken the determination of the Government to honestly fulfill every international obliga-

tion, yet it is to be earnestly hoped, on every ground, that the devastation of armed conflict may speedily be stayed and order and quiet restored to the distracted island, bringing in their train the activity and thrift of peaceful pursuits."

July 27, 1896, a further proclamation was promulgated, and in the annual message of December 7, 1896, the President called attention to the fact that "the insurrection in Cuba still continues with all its perplexities," and gave an extended review of the situation.

We are thus judicially informed of the existence of an actual conflict of arms in resistance of the authority of a government with which the United States are on terms of peace and amity although acknowledgement of the insurgents as belligerents by the political department has not taken place; and it cannot be doubted that, this being so, the act in question is applicable.

We see no justification for importing into Section 5283 words which it does not contain and which would make its operation depend upon the recognition of belligerency; and while the libel might have been drawn with somewhat greater precision, we are of opinion that it should not have been dismissed.

This conclusion brings us to consider whether the vessel ought to have been released on bond and stipulation.

It is provided by Section 938 of the Revised Statutes that—

"Upon the prayer of any claimant to the court that any vessel, goods, wares, or merchandise, seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed, &c. . . . If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States, &c., . . . the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant. . . ."

Section 939 provides for the sale of vessels "condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bond shall not have been given by the claimant . . ."

Section 940 authorizes the judges to do in vacation everything that they could do in term time in regard to bonding and sales, and to "exercise every other incidental power necessary to the complete execution of the authority herein granted."

Section 941 provides:

"When a warrant of arrest or other process *in rem* is issued in any cause of admiralty jurisdiction, except the cases of seizure for

forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge, &c. . . . ."

By Section 917 this court may prescribe rules of practice in admiralty " in any manner not inconsistent with any law of the United States."

Rule 10, as thus prescribed, provides for the sale of perishable articles or their delivery upon security to " abide by and pay the money awarded by the final decree."

Rule 11 is as follows:

" In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned."

In " The Mary N. Hogan," 17 Fed. Rep. 813, Judge Brown, of the Southern District of New York, refused to deliver the vessel on stipulation, and referring to rule 11, said that it was not in form imperative in all cases, but left to the court a discretion which might be rightly exercised under peculiar circumstances; and that the rule clearly should not be applied where the object of the suit was " not the enforcement of any money demand, nor to secure any payment of damages, but to take possession of and forfeit the vessel herself in order to prevent her departure upon an unlawful expedition in violation of the neutrality laws of the United States." And he added: " It is clearly not the intention of Section 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a hostile expedition against a friendly power, which might entail a hundredfold greater liabilities on the part of the Government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of Section 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself. The Government is, therefore, entitled to retain her in custody, and Rule 11 cannot be properly applied to such a case."

In " The Alligator," 1 Gall. 145 (decided in 1812), Mr. Justice Story referred to an invariable practice in all proper cases of seizure, to take bonds for the property whenever application was

made by the claimant for the purpose, but that was a case where the claimant had been allowed to give bond without objection and was attempting to avoid payment by alleging its irregularity; and in "The Struggle," 1 Gall. 476 (1813), the same eminent judge, in making a similar ruling, said: "That where the claimant voluntarily accepts a delivery on bail, it is an estoppel of his right to contest the validity of the security."

But in section 941 of the Revised Statutes the exception was introduced of "cases of seizure for forfeiture under any law of the United States." And it seems obvious that the release on bond of a vessel charged with liability to forfeiture under Section 5283, before answer or hearing, and against the objection of the United States, could not have been contemplated. However, as this application was not based upon absolute right, but addressed to the sound discretion of the court, it is enough to hold that, under the circumstances of this case, the vessel should not have been released as it was, and should be recalled on the ground that the order of release was improvidently made. (United States *vs.* Ames, 99 U.S. 39, 41, 43.) If the vessel is held without probable cause her owners can recover demurrage, and, moreover, vessels so situated are frequently allowed to pursue their ordinary avocations while in custody pending suit, under proper supervision, and in order to prevent hardship.

The decree must be reversed and the cause remanded to the district court with directions to resume custody of the vessel and proceed with the case in conformity with this opinion.

Ordered accordingly.

True copy. Test:
[SEAL]

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

DISSENT OF MR. JUSTICE HARLAN.

Supreme Court of the United States. No. 701.—October Term, 1896.

THE UNITED STATES, *Petitioner*,
vs.
THE STEAMER "THREE FRIENDS," HER ENGINES, &c., NAPOLEON B. BROWARD and MONTCALM BROWARD, *Claimants*.

On writ of *certiorari* to the United States Circuit Court of Appeals for the Fifth Circuit.

March 1st, 1897.

Mr. Justice HARLAN dissenting.

I am unable to concur in the views expressed by the court in the opinion just delivered. In my judgment a very strained construction has been put on the statute* under which this case arises—one not justified by its words, or by any facts disclosed by the record, or by any facts of a public character of which we may take judicial cognizance. It seems to me that the better construction is that given by the learned judge of the district court. I concur in the general views expressed in his able and satisfactory opinion, which is given below. That opinion so clearly and forcibly states the reasons in support of the conclusion reached by me that I am relieved of the labor of preparing one, which I would be glad to do, if the pressure in respect of other business in the court did not render that course impracticable.

The present case has been made to depend largely upon the language of public documents issued by the Executive branch of the Government. If the defects in the libel can be supplied in that way, reference should be made to the last annual Message and accompanying documents sent by President Cleveland to the Congress of the United States. In that Message the President said that the so-called Cuban Government had given up all attempt to exercise its functions, and that it was "confessedly (what there is the best reason for supposing it always to have been in fact) a government merely on paper." And in his report to the President, under date of December 7th, 1896, the Secretary of State said: "So far as our

* "§ 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel and furniture, together with all materials, arms, ammunition and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States."

information shows, there is not only no effective local government by the insurgents in the territories they overrun, but there is not even a tangible pretence to established administration anywhere. Their organization, confined to the shifting exigencies of the military operations of the hour, is nomadic, without definite centers, and lacking the most elementary features of municipal government. There nowhere appears the nucleus of statehood. The machinery for exercising the legitimate rights and powers of sovereignty and responding to the obligations which *de facto* sovereignty entails in the face of equal rights of other States is conspicuously lacking. It is not possible to discern a homogeneous political entity, possessing and exercising the functions of administration and capable, if left to itself, of maintaining orderly government in its own territory and sustaining normal relations with the external family of governments."

It does not seem to me that the persons thus described as having no government except one on paper, with no power of administration, and entirely nomadic, constitute a colony, district or "people" within the meaning of the statute. In my opinion, the words "of any colony, district or people" should be interpreted as applying only to to a colony, district or people that have "subjects, citizens or property." I cannot agree that the persons described by the President and Secretary of State can be properly regarded as constituting a colony, district or people, having subjects, citizens or property. It cannot be that the words "any colony, district or people," where they first appear in Section 5283, have any different meaning from the same words in a subsequent clause, "the subjects, citizens or property . . . of any colony, district or people, with whom the United States are at peace." The United States cannot properly be said to be "at peace," or not "at peace," with insurgents, who have no government, except "on paper," no power of administration, and are merely nomads.

NOTE—The opinion of Judge Locke referred to in the foregoing dissent of Mr Justice Harlan will be found infra at pages 62–71.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX II

PART II.

UNITED STATES VS. "THE LAURADA."

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF DELAWARE.

THE UNITED STATES
vs.
AMERICAN STEAMSHIP "LAURADA," HER TACKLE, APPAREL AND FURNITURE.

Libel of Information.

To the Judge of said Court:

Lewis C. Vandegrift, attorney of the said United States for the district of Delaware, who for the said United States in this behalf prosecutes, files this his libel of information against the American steamship "Laurada," her tackle, apparel and furniture, and against all persons lawfully intervening for their interests therein; and thereupon the said attorney of the said United States, who prosecutes as aforesaid for the said United States, doth allege and give your honor to understand and be informed that on the thirty-first day of March, in the year eighteen hundred and ninety-seven, at the port of Wilmington, in the district aforesaid, and the collection district of Delaware, on navigable waters within the admiralty and maritime jurisdiction of this honorable court, to wit, on the Christiana River, at the port of Wilmington aforesaid, William H. Cooper, then and still collector of customs for the port and collection district aforesaid, did seize the said American steamship "Laurada," her tackle, apparel and furniture, and held the same in his custody, for violation of Title LII, U. S. R. S., as the same relates to the inspection of hulls and boilers, until the said attorney of the United States, acting for and on behalf of the United States, filed a libel of information in this court, and, among other things, prayed that due process of law should issue against the said steamship "Laurada," her tackle, apparel, and furniture, pursuant to which prayer process issued and the United States marshal for the district aforesaid took and now has possession of said steamship, and said steamship being in the custody of said marshal as aforesaid is still at the said port of Wilmington, where she was seized as aforesaid, and on navigable waters within the admiralty and maritime jurisdiction of the United States and of this honorable court. That since the seizure of the said steamship "Laurada," as aforesaid, information has been received by the said attorney of the United States in and by which it appears that in addition to the violation of the statutes of the United States as set forth in the libel of information first above mentioned, there has also been a violation of Section 5283 of the Revised Statutes of the United States, in that the said steamship "Laurada" was furnished, fitted out,

and armed within the limits of the United States with intent that the said steamship should be employed in the service of a colony, district, or people, to commit hostilities upon the subjects, citizens, or property of a foreign prince or state with whom the United States are at peace; for the violation of which said Section 5283 the said collector of customs for this district has again this thirteenth day of April, A. D. 1897, and before the filing of this libel of information seized said steamship "Laurada," and as such collector of customs now has custody of said steamship, she now being at the port of Wilmington, in this district, on waters navigable from the sea by vessels of the burden of ten tons and upwards, and within the admiralty and maritime jurisdiction of this honorable court as aforesaid.

That by reason of the premises the said steamship "Laurada" with her tackle, apparel and furniture thereby became and are liable to forfeiture to the United States, the causes for said forfeiture being hereinafter more particularly set out as follows, to wit:

1. For that the said steamship or vessel "Laurada" was on or about the twenty-sixth day of February A. D. eighteen hundred and ninety-seven, within the limits of the United States, to wit, at the city of Baltimore, in the State of Maryland, fitted out by Samuel Hughes, the master thereof, with intent that such vessel should be employed in the service of a foreign people who were in revolt against the recognized government of the island of Cuba, a dominion of the King of Spain, to commit hostilities against the subjects, citizens or property of the said King of Spain in said island of Cuba, the said King of Spain then and there on the date aforesaid and ever since being a foreign prince with whom the United States were then and are now at peace; contrary to the form of act of Congress in such case made and provided.

2. For that on or about the twenty-sixth day of February A. D. eighteen hundred and ninety-seven, within the limits of the United States, to wit, at the port of Baltimore, in the State of Maryland, Samuel Hughes, then and there being the master of the said steamship "Laurada," then and there procured to be fitted out with food and supplies the said steamship or vessel "Laurada," with the intent on the part of the said Samuel Hughes, master, that such steamship or vessel should be employed in the service of a foreign district or people, to wit, those persons on the island of Cuba who were then and there in armed insurrection against the recognized government of said island, to wit, the King of Spain, to commit hostilities against the subjects, citizens or property of a foreign prince with whom the United States were at that date and now are at peace, to wit, against the King of Spain, of whose dominion the said island of Cuba forms a part; contrary to the act of Congress in such case made and provided.

3. For that on or about the twenty-sixth day of February, A. D.

eighteen hundred and ninety-seven, within the limits of States, to wit, at the port of Baltimore, in the State of Maryland, Samuel Hughes, then and there being the master of the said steamship or vessel "Laurada," was then and there knowingly concerned in the furnishing or fitting out of said steamship or vessel with food and supplies for a voyage to the island of Cuba for the purposes hereinafter mentioned, with intent that such vessel, so furnished and fitted out, should be employed in the service of a certain people then engaged in armed resistance to the government of the King of Spain in the island of Cuba, said vessel so fitted out as aforesaid being intended as aforesaid to commit hostilities against the subjects, citizens or property of the said King of Spain in the said island of Cuba, the said King of Spain then and there being a foreign prince with whom the United States then and there were and are now at peace; contrary to the form of the act of Congress in such case made and provided.

4. For that the said steamship or vessel "Laurada," whereof one Samuel Hughes was then and there master, on or about the twenty-sixth day of February, A. D. eighteen hundred and ninety-seven, within the navigable waters of the United States, to wit, at the port of Baltimore in the State of Maryland, and within the limits of the United States, was then and there by certain persons to the said attorney of the United States unknown, furnished and fitted out with supplies and food for a journey or cruise to the hereinafter mentioned island of Cuba, with intent then and there to be employed in the service of a certain people, to wit, certain people then and there engaged in armed resistance to the government of the King of Spain in the island of Cuba, and with intent to cruise and commit hostilities against the subjects, citizens and property of the King of Spain in the island of Cuba, and on the said date and day last aforesaid, and being so furnished and fitted out as aforesaid, then and there aforesaid, from the navigable waters of the United States, to wit, from the city of Baltimore aforesaid, proceeded upon a voyage to the said island of Cuba, with the intent aforesaid; contrary to the form of the act of Congress in such case made and provided.

5. For that on or about the —— day of February, A. D. eighteen hundred and ninety-seven, at or near the mouth of the Delaware Bay, within the limits of the United States, the said steamship or vessel "Laurada" was by Samuel Hughes, her master, then and there fitted out with life boats and surf boats with intent that such steamship or vessel should be employed in the service of a foreign colony, district or people, to wit, certain rebels who then were and now are in a state of insurrection in the island of Cuba against the authorized and recognized government of the King of Spain, to cruise and commit hostilities against the subjects, citizens or property of the King of Spain in the said island of Cuba, the

said United States then and there and now being at peace with the said King of Spain; contrary to the form of the act of Congress in such case made and provided.

6. For that on or about the —— day of February, A. D. eighteen hundred and ninety-seven, at or near the mouth of the Delaware Bay, within the limits of the United States, certain person or persons, to the said attorney of the United States unknown, were then and there knowingly concerned in the furnishing and fitting out of the said steamship or vessel "Laurada," in that such unknown person or persons then and there knowingly furnished said steamship or vessel with certain life boats and surf boats, with intent on the part of such person or persons that such steamship or vessel so furnished and fitted out as aforesaid should be employed in the service of a certain foreign people, to wit, certain rebels who then were and now are in a state of insurrection in the island of Cuba against the authorized and recognized government of the King of Spain, to cruise and commit hostilities against the subjects, citizens or property of the said King of Spain in the said island of Cuba, the said United States then and there and now being at peace with the said King of Spain; contrary to the form of the act of Congress in such case made and provided.

7. For that the said steamship or vessel "Laurada" was on or about the —— day of March, A. D. eighteen hundred and ninety-seven, while off Barnegat, on the eastern coast of the United States, and within the limits of the said United States, fitted out and armed by Samuel Hughes, her master, with intent that such vessel should be employed in the service of a certain people, to wit, certain people in the island of Cuba then in open revolt against the government of the King of Spain, to cruise and commit hostilities against the subjects, citizens or property of the said King of Spain within the said island of Cuba, the said King of Spain being then and there a foreign prince, and the said government of Spain being then and there a foreign state with whom the United States then were and now are at peace; contrary to the form of the act of Congress in such case made and provided.

8. For that the said steamship or vessel "Laurada" was, on or about the —— day of March, A. D. eighteen hundred and ninety-seven, while off Barnegat, on the eastern coast of the United States, within the limits of the said United States, procured to be fitted out and armed with men, dynamite, cannon, cartridges, guns and other munitions of war, by Samuel Hughes, her master, with intent that such vessel should be employed in the service of a foreign people who were in insurrection in the island of Cuba, a dominion of the King of Spain, against the recognized government of the said King of Spain, to commit hostilities against the subjects, citizens or property of the said King of Spain in the said island of Cuba, the said King of Spain then and there on the date aforesaid

and ever since being a foreign prince or state with whom the United States were then and there and now are at peace; contrary to the form of the act of Congress in such case made and provided.

9. For that on or about the —— day of March A. D. eighteen hundred and ninety-seven, while the said steamship or vessel "Laurada" was off Barnegat on the eastern coast of the United States, within the limits of the said United States, Samuel Hughes, her master, was then and there knowingly concerned in the furnishing, fitting out and arming of said steamship or vessel, in that men, dynamite, torpedoes, cannon, cartridges, guns, electrical apparatus and other munitions of war were then and there taken on board the said steamship or vessel "Laurada," with the intent that such vessel so furnished, fitted out and armed, should be employed in the service of a certain colony, district or people, to wit, the Cuban insurgents then and there and now engaged in armed resistance to the established authority of the King of Spain in the island of Cuba, to commit hostilities in the said island of Cuba against the subjects or property of the King of Spain, a foreign prince with whom the United States then were and are now at peace; contrary to the form of the act of Congress in such case made and provided.

10. For that on or about the —— day of March A. D. eighteen hundred and ninety-seven, off Barnegat, on the eastern coast of the United States, and within the limits of the said United States, certain person or persons, to the said attorney of the United States unknown, were then and there knowingly concerned in the furnishing, fitting out and arming of the said steamship or vessel "Laurada," in that said unknown person or persons, knowingly as aforesaid, then and there furnished and fitted out the said steamship or vessel with men, dynamite, torpedoes, cannon, cartridges, electrical apparatus and other munitions of war, with intent that the said steamship or vessel, so furnished, fitted out and armed, should be employed in the service of a foreign district or people, to wit, certain insurgents in the island of Cuba, otherwise called Cuban revolutionists, to commit hostilities against the subjects, citizens, or property of the King of Spain, in said island of Cuba, the said King of Spain then and there being a foreign prince with whom the United States were then and there and now are at peace; contrary to the form of the act of Congress in such case made and provided.

11. For that on or about the —— day of March, A. D. eighteen hundred and ninety-seven, off Barnegat, on the eastern coast of the United States and within the limits of the said United States, certain person or persons, to the said attorney of the United States unknown, were then and there knowingly concerned in the furnishing, fitting out and arming of the said steamship or vessel "Laurada," in that said unknown person or persons, knowingly as aforesaid, then and there furnished and fitted out the said steamship or vessel with men, dynamite, torpedoes, cannon, cartridges, electrical apparatus and

other munitions of war, with intent that the said steamship or vessel, so furnished, fitted out and armed, should be employed in the service of a foreign district or people, to wit, certain persons in the district of Pinar del Rio, in the island of Cuba, who were then and now are in insurrection against the King of Spain, said vessel being employed as aforesaid to commit hostilities in Pinar del Rio as aforesaid against the subjects, citizens or property of a foreign prince or state, to wit, the said King of Spain, with whom the United States are now and then were at peace; contrary to the act of Congress in such case made and provided.

12. For that during the month of March, A. D. eighteen hundred and ninety-seven, Samuel Hughes, master of the said steamship or vessel "Laurada," did (within the limits of the United States, to wit, from the deck and hull of a certain sailing vessel of the said United States, to wit, the "Donna M. Briggs," and the deck and hull of the said "Laurada," the latter then and there being a steam vessel, also of the United States of America, and both of said vessels then belonging to certain person or persons then citizens of the United States and whose names are to the said attorney of the United States unknown, on the high seas, to wit, on the Atlantic Ocean, on navigable waters within the admiralty and maritime jurisdiction of the United States and within the jurisdiction of this court), fitted out and armed the said steamship or vessel "Laurada" with men, cannon, cannon balls, dynamite, torpedoes, cartridges, guns and other munitions and instruments of war, with intent that such vessel so furnished, fitted out and armed, should be employed in the service of a foreign people, to wit, certain people in the island of Cuba who were then in insurrection against the government of Spain, to commit hostilities in said island of Cuba against the subjects, citizens or property of the King of Spain, the said King of Spain being then and there the recognized ruler in and over the said island of Cuba and being a foreign prince with whom the United States were then and there and now are at peace; contrary to the form of the act of Congress in such case made and provided.

13. For that during the month of March A. D. eighteen hundred and ninety-seven, Samuel Hughes, master of the said steamship or vessel "Laurada," was (within the limits of the United States, to wit, from the deck and hull of a certain sailing vessel of the said United States, to wit, the "Donna M. Briggs," and the deck and hull of the said "Laurada," the latter then and there being a steam vessel, also of the United States of America, and both of said vessels then belonging to certain person or persons then citizens of the United States and whose names are to the said attorney of the United States unknown, on the high seas, to wit, on the Atlantic Ocean, on navigable waters within the admiralty and maritime jurisdiction of the United States and within the jurisdiction of this court), knowingly concerned in the furnishing, fitting out and arming of the

said steamship or vessel "Laurada" with men, cannon, ca[illegible], dynamite, torpedoes, cartridges, guns and other munitions and instruments of war, with intent that such vessel so furnished, fitted out and armed should be employed in the service of a foreign people, to wit, the Cuban insurgents now engaged in armed resistance to the established authority of the King of Spain in the island of Cuba, to commit hostilities in the said island of Cuba against the subjects or property of the King of Spain, a foreign prince with whom the United States are now and then were at peace; contrary to the act of Congress in such case made and provided.

14. For that the steamship or vessel "Laurada" was, on or about the twenty-sixth day of February, A. D., eighteen hundred and ninety-seven, furnished and fitted out within the limits of the United States, to wit, at the city of Baltimore, in the State of Maryland, by Samuel Hughes, her master, for a voyage or cruise to the island of Cuba as hereinafter stated; that from the said city of Baltimore the said steamship or vessel, under the command of the said Samuel Hughes, proceeded to a point at or near the Delaware Breakwater, within the limits of the said United States, where she was further furnished or fitted out by the said Samuel Hughes, together with certain other person or persons to the said attorney of the United States unknown, with certain life and surf boats for use on the expedition or cruise in which she was then engaged and which is hereinafter mentioned; that from the point last aforesaid, under the command of the said Samuel Hughes, the said steamship or vessel "Laurada" proceeded along the eastern coast of the United States to a point off the coast of New Jersey and within the limits of the said United States, and then and there was furnished and fitted out with men, arms, cannon, cartridges, dynamite, torpedoes and other munitions of war by the said Samuel Hughes and other person or persons to the said attorney of the United States unknown, and from thence with the schooner "Donna M. Briggs" in tow, likewise having on board a cargo composed of men and munitions and instruments of war aforesaid, proceeded to a point at or near the island of Cuba, which said island was from the time she left the port of Baltimore her ultimate destination, and then and there, while on the high seas, to wit, on the Atlantic Ocean, the said "Laurada" was further furnished, fitted out and armed with men, munitions and instruments of war from the said schooner which she had towed as aforesaid, both the said schooner and the said steamship "Laurada" being vessels of the United States of America, and owned by citizens of the said United States, who to the said attorney of the United States are unknown. That the furnishing, fitting out and arming of the said steamship or vessel "Laurada," as the same is hereinbefore particularly set forth, was with the intent that the said steamship or vessel "Laurada" should be employed in the service of a certain colony, district or people,

to wit, the Cuban insurgents, then and now engaged in armed resistance to the established authority of the King of Spain in the island of Cuba, to commit hostilities in the island of Cuba against the subjects or property of the said King of Spain, a foreign prince with whom the United States were then and are now at peace; contrary to the act of Congress.

15. That after the said steamship or vessel "Laurada" had committed the hostilities hereinbefore recited she did, on or about the —— day of March, A. D. eighteen hundred and ninety-seven, sail from a point at or near the said island of Cuba to the port of Wilmington, within the district of Delaware, at which said last named place she was seized in the manner hereinbefore stated, on navigable waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, and said steamship or vessel is now within this district at the port of Wilmington aforesaid.

16. That all and singular the premises are and were true, and within the admiralty and maritime jurisdiction of the United States of America and of this honorable court, and that by force of the statute in such case made and provided the said steamship or vessel "Laurada," her tackle, machinery, apparel and furni[illegible] became and are forfeited to the use of the said United States.

Wherefore, the said attorney of the said United States of America, who prosecutes as aforesaid for the said United States, prays the usual process and monition of this honorable court against the said steamship or vessel "Laurada," and her tackle, apparel, machinery, and furniture, in this behalf to be made, and that all persons interested in such vessel and her tackle, apparel, machinery and furniture aforesaid, may be cited to answer the premises, and that all due proceedings being had thereon this honorable court may be pleased to decree for the forfeiture aforesaid and that the said steamship or vessel "Laurada" and her tackle, apparel, machinery and furniture may be condemned as forfeited according to the statutes and act of Congress in that behalf provided, and that notice be given to all persons concerned in interest, requiring them and each of them to appear on the return day of such process and show cause, if any they have, why such forfeiture should not be decreed.

(Sgd) LEWIS C. VANDEGRIFT,
United States Attorney, for the District of Delaware.

A true copy. Attest:
[SEAL.] S. R. SMITH,
Clerk U. S. District Court, Dist. of Del.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX III.

PART I.

UNITED STATES VS. EMILIO NUNEZ, AND CHARLES B. DICKMAN, SOUTHERN DISTRICT OF NEW YORK (1896)

PART II.

UNITED STATES VS. JOHN D. HART, EASTERN DISTRICT OF PENNSYLVANIA (1897)

PART III.

UNITED STATES VS. J. J. LUIS, DISTRICT OF MARYLAND (1897)

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX III.

PART I.

UNITED STATES VS. NUNEZ AND DICKMAN, NEW YORK CITY (1896)

IN THE

District Court of the United States,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES
vs.
EMILIO NUNEZ AND
CHARLES B. DICKMAN.

BEFORE HONORABLE ADDISON BROWN, J., AND A JURY.

CLOSING ADDRESS ON BEHALF OF THE GOVERNMENT OF HONORABLE WALLACE MACFARLANE.

May it please the court and gentlemen of the jury, I have listened with interest to the summing up of this case by the eminent counsel for the defendants here. It begins with an adroit appeal to your sympathies for Cuba struggling to be free under the familiar pretense of not appealing to your sympathies at all, and then by a usurpation of the function of the court, the learned counsel has made a statement of the meaning of the law, which has taken up at least half the time of his address to you, and which is a view of the law that the Supreme Court has entirely repudiated.

I said to the learned counsel yesterday that he did not know the law, because he had not read the latest exposition of it, and almost the only authoritative exposition of it, except those that have been heard in this court since that decision was rendered, and from what he has said I am inclined to infer that he has not read that decision yet; or, if he has, that it does not suit him. He then proceeds to denounce the witnesses for the Government by general statements in respect to their testimony, making no distinction between them—all are liars, Spanish spies, in the pay of the Spanish Government since this vessel came back in June last from successfully carrying on this expedition and landing it in Cuba.

Now, some little respect should be paid, even by counsel for the defendants in a criminal case, to the evidence. There is absolutely no evidence in this case that these witnesses are paid by the Spanish Government; less than all is there any evidence that these witnesses, as counsel most improperly suggested, are suborned by the

Spanish Government. A word in respect to these witnesses, and in respect to all this attempt to discredit their testimony by showing what they are paid. All witnesses detained for trial are paid. The laws of the United States provide that they shall be paid. When that vessel came back to the United States in June last no trial of this case could be had for five months. Most of these witnesses are sailors, men of a roving disposition, who are here, there and everywhere, here to-day and gone to-morrow. I might have taken everyone of these witnesses and by the process of the court have locked them up in jail and kept them there for five months and a half, during which time the Government must pay for their board and lodging, and when the trial is had and the witnesses discharged must, by positive statute, pay them each one dollar a day. General Tracy knows that. He has had lots of experience with that law in his day. Think of taking witnesses and locking them up in jail for five months and a half. To detain a witness a day or for any length of time in jail is a harsh proceeding. It excites great public criticism, and is a great misfortune for the witness. A perfectly innocent man may be locked up for months. It is much more desirable, much more humane, to agree with these witnesses to pay them for the time that they remain at the service of the Government until the trial of the case, the facts of which are known to them, and to pay them an equivalent sum for their board and lodging during the time the Government would have had to pay for it were they actually locked up. The law recognizes and supports the principle of paying witnesses for the time during which they are detained for trial. The law recognizes the entire propriety of paying a witness for his time who is detained to await trial in respect to some transaction of which he knows. These men got $17 a week, from which they paid for their board and lodging, and the difference between that and what the Government would have had to pay them if they had been locked up is trifling.

Mr. TRACY. You do not pretend that the Government pays them?

Mr. MACFARLANE. I sum this case up on the evidence. You do not. You told the jury, without a word of evidence to support or justify you, that these witnesses are paid by Spain, under the control of the hordes of Spanish spies who, you say, infest this city, and that they have even been suborned by the Spanish Government; and there is not one word of justification for such a statement. On the evidence in this case, it is grossly slanderous and should not be given the slightest weight. Gentlemen, you must guard against letting violent statements of counsel, unless they are justified by the evidence, as you recollect it, have any effect whatever upon your minds. No prosecution could be successfully conducted if statements of counsel for the defense are to be taken in place of the evidence as given by witnesses and of the law as given by the court.

I should not have said anything about the law in this case unless, so much time had been devoted to it by defendants' counsel. I should have left it to the court. But he has given you such a preposterous view of the law that it seemed to me as you listened to it you must have wondered why this statute is on the statute books of the United States at all, or why in the world it was ever passed if General Tracy's view of the law is correct. That statute is an ancient one. General Washington caused its enactment, and it has been virtually in the form in which he proposed it on our statute books ever since 1794. It provides that any person who begins, or sets on foot, or provides or prepares the means for any military expedition or enterprise to be carried on from the territory of the United States against a power with which the United States is at peace, is liable to the penalties prescribed in the statute. It is not of course, necessary that the persons accused should have all to do with this expedition; that they should have all to do with beginning it, or all to do with setting it on foot, or all to do with providing or preparing the means for it. Any person who participates in it at all in any respect with the intention of furthering the object of the enterprise is within the statute and is guilty.

You are told that this military enterprise or expedition requires a military organization. This is not true. I think in one of these cases in a Southern State the judge gave the jury to understand that they must form in line and march through the streets of the city, with bands and banners and flags flying, or that they would not be within the statute. We had to get the question to the Supreme Court before we could get rid of these absurdities. A statute like that is passed to prohibit real evils. Legislatures do not pass statutes as a rule aimed at something that does not exist or is never liable to exist. They are dealing with real questions. The military enterprises or expeditions which that statute was intended to prevent and render unlawful are those military expeditions and enterprises which in modern times and since that statute was passed, are possible. It is that class of military expeditions or enterprises which we commonly know as filibustering expeditions carried on from the territory of this country against some other country with which we are at peace. Such a thing as men openly organizing for military purposes, with military equipments and command, within our territories here would be unheard of, and nothing of that sort would ever arise. Any combination of men,—and with this statement I shall say all I have to you on the law of this case which, of course, the court will give to you very fully—any combination of men coming together within the territories of the United States, and then and there intending to go thence to some place for a hostile and military purpose, against a country with which we are at peace, is within that statute. They do not need to be organized according to military rules or military tactics. They do not need

even to have arms. "Any combination of men organized here in the United States to go to Cuba and make war upon its government (that means its legitimate government, the Spanish Government) provided with arms and ammunition, we being at peace with the government of Cuba (Spain), constitutes a military expedition; and it is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized according to the tactics or rules which relate to what is known as infantry, cavalry, or artillery. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, or to have provided themselves with the means of doing so." It is not even necessary that they should have arms. If you show that a body of men have started from the territory of the United States, and show that after, if you will, they were outside the territory of the United States, they developed a military intention and a hostile purpose against a country with which the United States is at peace, the whole question comes down to the intention which these persons entertained when they left the territory of the United States. On the evidence in this case it will come down to what was the intention of these defendants when they left this city on the 9th of May; that intention being shown by what they did both at the time they left, before the vessel came to New York, and what they did afterwards, for it is from their acts in the whole course of this proceeding that you will infer what their intention was when they left this district. If you are convinced beyond a doubt which reasonable men should entertain by the evidence of what they did after they left here that when they left here their intention was to achieve what they actually did achieve, and to take up these men and arms and land them in Cuba, why, you will find them guilty. It will become a pure question of what their purpose was when they left this district on the 9th of May. So much for what I contend to be the law of this case.

In order to consider this evidence properly it must be done in some methodical way. Fortunately charges under this statute divide themselves into two very clear divisions. What was the thing that the accused were doing? Was it an unlawful thing or not? If it was not an unlawful thing, it will become wholly unnecessary to consider the evidence of their connection with it. It could not be an unlawful thing under that statute unless it was a military expedition or enterprise; the expedition or enterprise, as I have told you, which they intended when they left this district, to go to Cuba, there to engage in hostilities with Spain. Let us look directly at the evidence to show that this was a military expedition or enterprise, leaving aside for the moment consideration of the connection of these defendants.

The evidence shows you that on the 8th of May this vessel left the City of Philadelphia. She came down the river having on

board her full complement of ship's boats. She took on board a whale boat and four yawl boats and stowed them away in her hold, and one I believe on deck; and got into this city on Saturday. The captain goes to the custom house in the afternoon, enters his vessel and clears her on the same day. He fills up a manifest which states that he has on board a few chairs and tables. The law does not require the ship's provisions to be stated in the manifest, but the manifest does not show that he has these boats on board. Nothing is said about them although the manifest contains a sworn statement from the master that he has stated everything that he has on board of his vessel in the way of cargo. He had these boats on board at that time, which had been taken on board his ship, of which he made no disclosure. Before he went on board his ship again that night he connected with these Cubans, Nunez and two or three others, and that night the ship sailed. Now, while the ship is sailing out of this port something else has been going on. While he has been clearing his vessel at the custom house something else has been going on. A man has bought from Hartley & Graham a large quantity of arms and ammunition, and has left there a considerable quantity in addition to be delivered with those he had purchased. On that Saturday these have been sent down to a pier on the East River. At the same time somebody has gone to the Greenpoint Lighterage Co., and, calling himself Cash, has made arrangements by which he employs from that company lighters and tug boats, paying an extravagant price for them. That day one of these lighters is towed up to that pier, Pier 39, at which all these military stores had been delivered. That afternoon that lighter is towed away from that pier loaded, and is taken over to Greenpoint. Later that night, with the cargo on board covered over, this lighter is taken out by a tug and towed up to Astoria. Just before she starts another lighter, hired by the same individual Cash, is brought out by another tug and taken up to Astoria. Meanwhile by dark small parties of men, five or six at a time, come to the 92nd street ferry, go across the East River to Astoria, and gather together in the vacant lot at the head of the dock until these tug boats and lighters have arrived there. They then go on board one of these lighters and distribute themselves over the lighter and the tug which has her in tow. Those barges and tugs then go up the Sound to Montauk Point; and they and this steamer, which has gone out the other way, come right together off Montauk Point. I am addressing you now merely on the evidence to show what the character was of this thing that they were doing. The men gathered together in small parties with every evidence of a desire to conceal; they start from this city; they get together in a remote place; they go in different ways from that taken by this steamer with which they were to connect; and they come together off Montauk Point. Then these arms that have been

gathered together here in New York, in conjunction with the assembling of these men, are put on board that steamer and the men go on board. Some of the men have revolvers when they come on board. As soon as the vessel starts they begin to open these boxes and bundles, and take out the rifles and cartridges and uniforms and machetes or swords, and proceed to arm themselves. Then they proceed to drill. They have on board a man who is known as a general, General Ruiz, who it is proved started on the "Laurada" from this city, went in company with the defendant Nunez down the harbor on that Saturday night until they got off Montauk Point and connected with these lighters.

So you have the organization coming on board that vessel; the men coming on board that vessel; the men opening the boxes and arming themselves, you have them drilling. What further? You have the vessel, instead of going south to Port Antonio, for which she cleared, stopping in her course off Montauk Point to get on board these men and arms. Then she proceeds directly to the coast of Cuba. As she approaches the coast the names on the ship are covered with canvas, the name on the pilot house is taken off, the lights are put out, and she puts in at night. First she sends ashore a mate in a small boat with several men, who is instructed to show a signal from the shore if the right place has been struck, or if they are to land. He shows the signal, but it is too rough to venture this landing, and the mate and boat come back. The next night the vessel puts in again, with all the same plan of secrecy—names covered, lights out. They see a search light coming down the coast and they put to sea again, fearing the search light is from a man-of-war. Early the next morning—Monday morning, the 18th—they put in and lower the boats. These men who have come on board off Montauk Point and who started from this city, who have opened these boxes of arms and ammunition and uniforms, and armed themselves and drilled themselves on board that steamer, go down on board these boats, and with their own accoutrements and arms, and with the surplus arms and ammunition, so far as they could get them in the boats that were landed, they go ashore.

That is the story, that is the evidence. There is substantially no denial of it. You have got to discredit the most certain facts here if you could discredit that part of this story. You might as well discredit the manifest from the custom house showing that the "Laurada" actually cleared, as to discredit a fact in regard to the thing that was actually done that I have stated here. But the evidence goes further. These men who had gone on board in conjunction with the arms (they had virtually taken the arms with them they were in their company from Astoria), who had opened the boxes, who had drilled themselves, who had landed in this mysterious manner on the coast of Cuba, there bury the surplus arms and ammunition which they have, and they then proceed as

an armed body under Ruiz to march with their arms and accoutrements through Cuba until they meet a large insurgent band under Colonel Pina, and then they go on.

And the witness Quinn, who has been so much denounced, as if the question for you were whether he constituted a spy or not; as if should you find he were a spy that that would absolutely discredit his testimony: there never was a more preposterous suggestion made in any court in any case than that Quinn was a spy. But if he had been from the start the question for you would be whether what he says about what was done is true. Many crimes are disclosed by spies and by detectives. Quinn says they even had fighting. And then Quinn, as he has described, got discharged by the President of the Cuban party, Cisneros, got to Havana, there the American Consul put him on board a steamer and he came back to New York without a shirt on his back, almost, and without a cent in his pocket.

Now, from these facts, and I have stated them with less strength than the evidence justified, and from that evidence in respect to the thing that was done, can you doubt that when these men left this district, when that vessel left this district, it was done with the intention of taking on board a body of men at some point, who should arm themselves or have arms with them, and who intended to go to Cuba, there to land to join the insurgent forces in their conflict with Spain? Can there be a man on the jury who has a single doubt that that was the intention of these men when they left this district, the purpose with which those arms were purchased, with which they were put on that lighter and taken to Astoria and thence to Montauk Point; or the slightest doubt that that was the purpose with which these small parties of men got together, crossed the 92nd street ferry, went on the other lighter, and when off Montauk Point went on board of that ship? Can there be any reasonable doubt, or any possible doubt, that these men when they left this district intended to take these arms that went with them on the other lighter, to arm themselves, to land in Cuba, there to join the insurgent forces in the conflict with Spain? If you believe that was the thing that they did, then it was a military enterprise or expedition, and was an unlawful enterprise or expedition, and the further question is what had these defendants to do with it?

Let us look at the evidence of the two witnesses. We have first, Quinn. He is denounced as a spy. The evidence shows that Quinn is a young man 23 years old. You saw him on the witness stand. You could look him in the face and see what sort of eyes he had, what experience he had, whether he was a witness dragged here under the process of the court and reluctantly stating his experience. There was no evidence that anybody had paid him anything, that he was in custody, or receiving any compensation for his testimony. He told you that he connected with the Cubans in

Boston. Cross examination showed that he had gone from one occupation to another, evidently a man of adventurous and roving disposition. That he had been sent by the Cuban party in Boston to the Cubans here, and had met this General Ruiz, who went in command of this party on the "Laurada," at what he stated was the Cuban headquarters, No. 252 West 14th street, the house where they commonly congregate in this city. He then connected with the man he pointed out in the courtroom, Dr. Castillo, who, the other evidence shows, was on one of these tugs that towed the lighters up to Montauk Point. There Dr. Castillo introduced him to Espin, the man who bought this ammunition, a gentleman with whom I have had some previous acquaintance not entirely unpleasant, though connected with these expeditions——

MR. RUBENS. I object to that as being entirely out of the evidence.

MR. MACFARLANE. Your objection is good. I will withdraw that. But do you suppose nothing has been said here in the courts of this trial about other expeditions? They have been referred to here time and again. He goes out with Quinn and buys him a part of his equipment. He was sent out by Castillo to do it. Mr. Espin is the man who the witness, certainly disinterested and whose testimony will not be questioned, Mr. Bruff, of Hartley & Graham, says purchased from him this ammunition which was sent on Saturday to Pier 39, and who left with it the additional quantities of rifles and cartridges which were also sent to Pier 39. You see Mr. Espin in this at the very start, and Dr. Castillo in it at the very start. Then Quinn is promised by Ruiz to make him a lieutenant. He is taken with the others to Astoria, as he has described, where he goes on board this ship, and where he is set to work drilling the men. He drills them until they are dissatisfied with his drilling. While it may seem almost ludicrous that a military operation should be carried on in that way, we must not test a filibustering expedition by our ideas of what constitutes an organized military force; these were rough men, adventurers, gotten together in a hurry, with probably very few officers to drill them until they should get to Cuba. But what reason is there to doubt the truth of Quinn's story that these men were drilled by him? The sailors tell you they saw them drilling. Is it an improbable thing? Isn't it the most probable thing in the world that if they had those arms and rifles on board that ship and opened them and accoutred themselves, that they would be drilled. You have the absolutely direct statement of an unimpeached witness, for I say he is unimpeached, that he did drill them, and his testimony is in respect to something that would be most probable. He then describes the landing of these boats, and he tells you what he did in Cuba; his experience for twenty days marching, when he met the Cuban government which was, as he tells you, on the move and in the saddle

and fording a stream. He went to the president, and the president put him through the lines, and gave him a letter which he produces merely to show the date and place it was written, San Blas, gave him a pass which carried him through the Cuban lines, and then he got into Nuevitas where, being taken by the Spanish, he appealed to the American consul, who then did the rest and had him sent to Havana, where General Lee got him his passport, which was put in evidence and shown you, and he came back here without a shirt and penniless. He told his story to a reporter who gave him a few dollars, and he got some money from the Quarantine Commissioners and from the Cuban Junta in New street in this city, and went right off to Boston. General Tracy told you that the moment he landed he went and told his story. The evidence shows directly the contrary. The evidence shows that he did not tell his story to anybody until the United States marshal found him in Boston working as a fireman on a locomotive in the Boston & Maine yard and served a subpœna on him.

Gen. TRACY. You do not mean that?

Mr. MACFARLANE. I mean that exactly. That is exactly the fact. He was brought to New York first on a subpœna from Boston, and he so testified.

Mr. TRACY. But he told the reporter on landing.

Mr. MACFARLANE. Yes, he told the reporter the story; but that was not your suggestion. You meant he told it to somebody who would make it disagreeable for the parties engaged in that expedition; at least, I so understood it. If you refer to his telling it to the reporter, you are entirely accurate. That is so.

Mr. TRACY. I don't know how better he would give the public information.

Mr. MACFARLANE. Yes; and that is the way he was found. He got back here August 17th or 18th, 1896, and he was not found in Boston until, as he states, some time this month or last month. Then he was found by a U. S. marshal and brought here on subpœna. You say he went into this as a spy, or that he was a spy in the sense in which that word is used. That he went in with the intention of telling this story when he got back is, in my opinion, wholly unjustified by the evidence, and would be an unjustifiable inference for you to draw. He is brought here under subpœna, and he has to tell his story or do, what one witness did, say he will not because it may incriminate him.

Quinn is not the only witness who testifies to the essential points of this story. We called first the sailor Weinman, of whose testimony, so far as I can see, there is not the slightest criticism to be made. They tell the same story about the meeting of the steamer, the lighter and arms, and the action of the men in opening them, and the landing of the vessel. Quinn tells it, Weinman tells it, Casparite tells it, Dumer tells it; every one of them tell what they

saw there in respect to the shipping of these arms and these men, the arming of the men, the drilling of the men, and the landing of the men and arms in Cuba. So I submit that the evidence from the witnesses in respect to what thing was being done there conclusively establishes the purpose of these people in leaving this city, and that that purpose was the going to Cuba with men and arms, and engaging in a warlike operation against Spain.

Let us consider first the evidence in respect to the defendant Nunez. What is his connection with it? What is there in this case which will enable you to conclude beyond any doubt which reasonable men ought to entertain in considering evidence that he was a participator in this unlawful act? You have first the arrival of the "Laurada" here, and he appears on board. That is his first appearance. He is on board the ship; he goes down to Montauk Point. What happened there? Our witnesses tell you, first Weinman (and all of them corroborate him in this statement,) he does not seem to be contradicted, that when the men and arms were on board and the captain signalled to go ahead, that the firemen and crew, or most of them, struck and would not work; that the mate came forward and asked what the matter was, and they said they would not work, and he went and called the captain. The captain came down and they told him they would not go to Cuba if this meant Cuba, and finally that they must have more money if they were going on this expedition. The captain said that his ship was not a bank, and finally offered them $50, which they refused. Then two of these witnesses, Holmes and Dumer, say that he said, "I will call Nunez and get some money from him" or "see if I can get some money from him." Quinn says that the first of this dispute between the captain and men he did not hear, but while it was going on he saw it and saw the captain come and speak to them, and he then saw the captain go and signal and call to one of the tugboats which had some men on board, including Castilio and Nunez, to come back. Now, is it plain that the testimony of the captain of the tugboat overthrows that and contradicts that? It has been told you here absolutely by counsel that he absolutely contradicts it. I will show you the absolute corroboration of it, so far as the captain is willing to testify at all. That tugboat, according to Quinn, is called back; a man comes on board whom he does not identify or will not identify, stands with the captain by the rail, some conversation went on in Spanish, I think he said, Castilio took a bill out of his pocket and passed it to the steamer. That is what he says. You will remember the controversy over his statement that he passed it to the steamer. One question was put to him, and he said to somebody on the steamer; he would not say to whom the bill was passed, but he said to somebody on the steamer. Then afterwards he saw a one hundred dollar bill in the possession of one of the crew. That is as far as Quinn goes. That

is what he saw. Of course, it must be remembered that these men about the ship, telling a thing, will every one of them vary in some respects in regard to what they observed; some would see details that others did not see, and hear things that others did not hear. Our witnesses, the sailors, agree that the tug was signalled back. Quinn, you remember, said the captain called and beckoned, that a man came on board from the tug, and the other witnesses say that man was Nunez.

Mr. RUBENS. There is no such evidence.

Mr. MACFARLANE. Yes; two of these witnesses say so.

Mr. RUBENS. You cannot find it in the record.

Mr. TRACY. Nobody says Nunez came aboard.

Mr. MACFARLANE. I read from Holmes' testimony: "Q. Had Nunez and his tug started away at that time? A. Yes, sir; they had started away from the side.

"Q. What did you see or hear then? A. I saw Colonel Nunez come back and have a talk with the captain.

"Q. Did the tug come alongside of the "Laurada"? A. I think it laid outside of the barge.

"Q. Did anybody come on board the "Laurada"? A. Yes, sir; Colonel Nunez came on board.

"Q. Which tug was it came back there? A. It was the tug Colonel Nunez was on. I think it was the 'Commander.'

"Q. You think it was the 'Commander'? A. I think it was.

"Q. You don't remember which it was? A. No, sir."

The further evidence shows it was the "Volunteer."

"Q. Did you see Colonel Nunez come on board? A. Yes, sir.

"Q. After this trouble with the men? A. Yes, sir."

I think I stated that evidence correctly.

Mr. TRACY. But he is contradicted.

Mr. MACFARLANE. Never mind the contradiction. I was criticised for saying that the witness testified to that, and I have shown that he did testify to it.

Now, another witness also testified to the same occurrence. Holmes testifies that he saw Nunez stand and speak to the captain. He did not hear what was said, he heard nothing of what was said, and that thereafter the captain who had said to these men, "I will call Nunez back and see if I can get money from him," gave to Weinman a one hundred dollar bill, which was finally distributed among these men. That is the direct testimony of the Government's witnesses on those points.

Now, gentlemen, I ask you to consider that. Unless you are going to say you will not believe anything those witnesses say, why, the inference is irresistible that the man who took that bill from Castilio over the side of the steamer was Nunez, and the man who gave it to the captain was Nunez; and if he was that man, there cannot be any doubt about his active participation in this enterprise. You have

the circumstance of the tug coming back testified to by Quinn. You have the sailors' testimony that it came back, and that Nunez came on board the ship from it, and that thereafter this bill which Quinn says Castilio took out and handed to somebody on the steamer, did come into the possession of the sailors and was distributed among them at Port Antonio. That is the evidence.

Now, it is said that the captain of the "Volunteer," our own witness, absolutely contradicts that. You will remember the captain of the "Volunteer," and the captain of the "Commander," and the officers of these various boats engaged in this enterprise, and Mr. McAllister. You say how very willing they were to answer questions! Mr. McAllister had to be threatened with punishment for contempt to make him answer. They were reluctant witnesses, taken out of the enemy's camp so to speak, from whom we had to extract what we could. Mr. Mosher was not a too friendly witness for the government. It is very important in regard to this testimony, as it will be in regard to the testimony of the witness they called from Florida, to see how Mosher utterly fails to contradict these witnesses about the tug coming back. He testifies that he was the captain of the "Volunteer," and took the barge Greenpoint to sea and connected with the "Laurada;" that he took a couple of men down with him, one of whom was introduced to him as Bradley, and that he brought five or possibly six men back with him after he finally left the Laurada. He would not identify any of the men as being in the court room except in this way:

"Q. Have you ever seen any of those five since? A. Not unless I have seen them in the court room to-day, and I don't know as I have seen them. That is the only reason that I would have to think so.

"Q. Whom have you seen in the court room to-day that came back with you? A. I don't know as there is anybody. I couldn't recognize them. All the men that came back with me had full beards.

"Q. What language did they speak? A. They were Spanish people."

He says he left the "Greenpoint" lying alongside the vessel pretty close to two hours.

"Q. You did not pay much attention to what was going on aboard the "Relief" or the "Greenpoint" when you got them alongside? A. I just saw them taking the stuff off; that is all.

"Q. What did these men do after they got back on board of your tug? A. I went to Greenport and got water, and then came to New York.

"Q. Did they come all the way back to New York with you? A. Yes, sir.

"Q. Do you think you see any of them around here in court now? A. None that I would want to swear to.

"Q. You are not very clear in your mind about it, are you? A. No, sir. I might make a mistake."

Then on cross-examination at page 261, he says:

"Q. After you left the ship and lay off from the ship were there any signals made from the ship to your tug to return? A. No, sir; not after I left the ship.

"Q. Exactly. After the lighter had been unloaded and you had cut loose from the ship and stood off a short distance, was there any signal made to your tug to return? A. No, sir. After that lighter was taken away by the 'Commander' I went alongside the ship and took off one man, I think, if I remember right."

It will clearly appear that what this witness of the Government referred to as the tug coming back after starting is what Captain Mosher testifies to, that after the lighter had been unloaded and had been taken away by the other tug that he did come back up to the side of the vessel, as he says, to take a man off. Now, see what further he says:

"Q. Then after you had taken off that one man and had gone away a short distance from the ship, was there a signal made to you to return? A. No, sir. We started away.

"Q. Did you return? A. No, sir."

That is, after he had come back to the ship and taken off a man he went off for good. Then on the re-direct examination he testifies, after leaving five men on board the tug:

"Q. Now, tell counsel when it was that those four men came on your tug? A. Some of them came over the lighter "Greenpoint," before I went alongside the ship, and after the "Greenpoint" went away I went alongside the ship and took on this other man."

He first came to the ship with the lighter, put the lighter against the ship, cut loose from the lighter; and then, as you will see by his own testimony, on a signal from the ship he came back to the side of the ship as he says to take a man off; all of which we agree to and is just what our witnesses testified to. This question is put by General Tracy to the captain of this tug boat which our men say did come back to the ship and did put a man on board and afterwards take him off again and take him away:

"Q. How were you called up? A. I suppose somebody hollered to us, if I remember right."

There is the testimony of the captain of the ship, testifying to the signal that was given to him to come back to that ship.

"Q. That was before your tug had started? A. Oh, we hadn't started at all then."

The witnesses said he had started. They meant nothing more by that than that he had cut loose from the lighter, and was apparently free from his tow.

Then they testify after stating the circumstances of the dispute, and the captain saying that he would call Nunez back, that the

captain did go to the side and call and beckon to that tug. The captain says so. He says, "Somebody hollered to us," and that he came up alongside the vessel. After saying that somebody called him (on page 265 of the minutes), and this is when his tug had come up in answer to that call:

"Q. But you did hear some talk about money? A. No more than they talked in Spanish. I couldn't understand them. They might have been talking about money or women, for all I know."

There is his testimony that there was a conversation when his tug came up to the side of the vessel on this signal, that that conversation was in Spanish, and he did not know what it was about. I will just read to you his testimony where he said that he was called back:

"Q. Who beckoned to you and called you back? A. They didn't call me back."

But he had formerly testified in answer to General Tracy that somebody had hollered to him and brought him back.

"Q. Who beckoned you back? A. I couldn't tell you. It might have been the man that came aboard. I don't know but what some of them told me to go alongside of the ship; I suppose they did. I don't know. There were no whistles blown, or anything like that."

We have no testimony that he was signalled by a whistle. Quinn says that the captain went to the side and called out to him and beckoned him back; and Mosher on the witness stand, in illustrating that signal, gave the same motion that Quinn did in indicating how he was beckoned to; and in the next answer to General Tracy, said also that somebody called to him. He says there was a conversation between those on the ship and those on the tug when he came up that time in Spanish, and it may have been about money, but he does not know what it was about.

I must submit that instead of contradicting this evidence, Mosher corroborates it very strongly. His tug did come back alongside of the "Laurada," and it did take a man on board, and he says that was the purpose of its coming back, and it did come back on signal.

Now, our witnesses say that the man who went back on it also came aboard from it. Did Mosher contradict that in any way? I think not. Now, gentlemen, where you find a witness called by the Government like Mosher, the captain of the "Volunteer," testifying in anything but a friendly spirit to the Government, going as far as that in corroboration of other witnesses on this very important point, it entitles their testimony in all other respects to very great weight. And I say to you that their testimony, unless you discredit them wholly, makes irresistible the inference that that tug when she had cut away from the lighter, after the lighter had gone away, had pulled out in tow of the "Commander," which brought up both barges, was signalled back by a call and somebody beckoning with the hand, and did come back, and a man did come on board, and

that man was Nunez, and there was a conversation between Nunez and Castilio in Spanish; that Castilio did take out his pocketbook and produce a bill and give it to somebody on the steamer, and that somebody was Nunez, and when the captain came back to the crew with the hundred dollar bill after his conversation with Nunez he had done what he told the crew he would do, called Nunez back and asked him for some more money, and he had got it.

Now, further as to the connection of Nunez with the expedition. You have him starting from New York. You have his presence there on the "Laurada," off Montauk Point. You have the witness Casparite testifying that when he was unloading the barge Nunez stood there and told him in English to "Hurry up." You have the evidence that he waited there until all this had been done. That, if my representation to you of this testimony is correct, he did come back on the captain's signal and got this money and gave it to the captain to pay these men. Is that the last we hear of Nunez? Does his friendly interest in this expedition, his desire to wish the boys good luck, end there? It does not. After that ship had carried these armed men down to Cuba and landed them, and had cut away the last boat, and had put off to sea with the remaining Cubans, seven or eight or nine, who did not get ashore on the boat, what did the captain do? Did he conclude his voyage and go to Port Antonio? He was cleared for Port Antonio. He had gotten rid of these fellows who had captured his ship off Montauk Point, and had on board only the seven or eight fellows that would not go ashore, and this ammunition that he could throw overboard. Why didn't he go on to Port Antonio and take up his cargo? He went back to Jacksonville. He went into the river on which Jacksonville stands, in the estuary, over the bar to the place technically called Mayport, which the sailors commonly referred to as Jacksonville. Now, what happens in Mayport? According to the uncontradicted testimony Colonel Nunez is in Jacksonville. According to the uncontradicted testimony he comes down on the tug "Kate Spencer" to the "Laurada," inside the bar at the mouth of the river. Why was he there? Why did the captain go there. They connect. Nunez, who had taken such a friendly interest in this expedition as to go with the steamer from this city, when all these other preparations are being made, to join the steamer off Montauk, who appears at Montauk on the steamer, who instructs the workmen in unloading that lighter, who tells them to hurry up; who, if I state the conclusions from the facts correctly, arranges this dispute with the captain—his friendly interest in this expedition continued to Jacksonville, and there he is. He gets his friend Mr. Barrs to come with him, or Mr. Barrs gets him, if you like to put it that way, to come on the tug "Kate Spencer." I understood Mr. Barrs to say at first that they heard that a Spanish man-of-war was out there and

they were going down to see. They heard before they started, or in the afternoon, that it was the "Laurada." They went down to see the "Laurada," to see how she got along, I suppose. I should think that Colonel Nunez would have had a very active curiosity to know what had happened on the "Laurada" since she blew her farewell whistle and left him at Montauk Point. If I had been he I should have got to the "Laurada" before she got outside Jacksonville river, and found out what was going on. Well, he comes out on this tug. I desire to call your attention, and there is no more important point in this whole testimony than that which I am about to make, to the almost complete, the peculiarly complete corroboration of one of the witnesses for the government in respect to what happened there, given by the defendants' witness Barrs. I am very glad they called it out on the witness stand. If there is any more testimony like that, I wish we had some of it. There is one declaration alone, the only one, of our witnesses which is in any way contradicted by Barrs. The witness Holmes says that Nunez came out on that tug. Mr. Barrs and the other witnesses agree that is so. Holmes was asked how far the tug stood away from the "Laurada." He said he could not state the distance, but 20 or 30 feet, or thereabouts; that Nunez said to the captain to clear out and go to Charleston. I frankly admit that Mr. Barrs' testimony is inconsistent with that statement; I do not admit that he absolutely contradicts it. He admits he came out on the tug. He was on it with Nunez, and he is asked what conversation Nunez and the captain had. He says there was some conversation, he don't just remember what, something about his health, or something like that. That is to say, the first thing Mr. Nunez asked the captain when he sees the "Laurada" coming back from this enterprise which he knew had started, was about his health, or something like that. That is what Mr. Barrs said. I hope I will not weary you with this testimony; I will be as brief as I can, but it is a very important point. It sustains the evidence of the prosecution very much, and I desire to call your attention to this with a little particularity. On his direct examination Mr. Barrs, their witness, is testifying to what happened when he went out on the tug with Nunez: "Mr. Nunez spoke to some one on board in Spanish, and we went on around to the dock and went up to the health officer's house." On his direct examination he says first that Mr. Nunez spoke to somebody on board the "Laurada" in Spanish. Then he is asked again:

"Q. Did you hear Nunez call out anything to the captain in English while you were standing alongside of him on that tug? A. Well, he spoke to him.

"Q. In English? A. I think so."

He had just stated that Mr. Nunez said something in Spanish:

"A. I think so. The captain was aft."

Remember what Holmes testified to—that the captain did come

down from the bridge and go aft, talking with Nunez while the tug was passing the vessel; and Casperite testified to that also:

"The captain was aft, and I think he spoke to him; just asked him how he was—something of that kind.

"Q. Did you hear him say: 'Clear out and go to Charleston as fast as you can?' A. No, sir; he never said that.

"Q. 'Because there is a revenue cutter coming after you,' or words to that effect?"

That is not testified to by Holmes; that is an entirely different conversation, to which I will refer in a minute.

"A. No, sir; that was never spoken on the steamer at all."

Now, you must take that witness's statement in regard to what Holmes said, with the qualification that the witness, after first stating the conversation was in Spanish, says on cross-examination that there was something said in English, and that it was just something about the captain's health; and that the captain went, or was, aft and talking to Nunez; and it will be for you to say whether Mr. Barrs is in that respect more to be credited than the sailor Holmes. I leave that to you. But you will remember that Mr. Barrs' testimony in respect to quite as material evidence from another witness is an absolute corroboration of it.

You will remember the witness Casperite, the last of our sailor witnesses, the man who stated that he was getting $17 a week, and who stood up, you will recall, and objected to some of General Tracy's questions. I won't stop now to read the testimony of each of these witnesses, of his version of what happened off Montauk Point. I have impressed upon your minds thoroughly what the sailors said about it. I will come right to Jacksonville, and I want to call your attention now with particularity to how absolutely Mr. Barrs corroborates Casperite. Casperite says they went into Jacksonville. He describes the locality, however, in so unmistakably the same way that Mr. Barrs does, that it is quite evident he meant they were inside the bar at the mouth of the river. Casperite says that Nunez came out on the tug, and he did not hear at that time what Nunez said. He saw that a conversation was going on, but was not in a position to hear it. He then said that the tug went in shore, that Mr. Nunez got off, went up the dock and up the steps of a house with a flag flying from it, which he, Casperite, called the custom house. Evidently he supposed it was the custom house from the flag flying. He then said that they came down afterwards; that Nunez and at least two others, one in uniform, got into the small boat which he called a launch, bnt which he said was propelled by oars, and came up to the steamer. That the captain went on the gangway, and he stood at the head of the gangway, and the boat came in close, and that according to the best of his recollection Nunez and the men in uniform were sitting in the after part of the boat. That Nunez and the captain had a conversation, and that

he heard Nunez say distinctly to the captain, "Get out so fast as you can, the revenue cutter will be after you." That is his story. And that then the launch went back again, they heaved the anchor, went out to sea, threw overboard the ammunition, and went up to Charleston. One circumstance which created great amusement among my friends here on the other side and their sympathizers when Casperite testified to it was what he said about the quarantine flag. Your honor will remember that, because you questioned him on that subject. He said that the customs officer told him to pull the flag down. It seemed a queer thing, but he stated something that seemed still more strange. He was asked what he did with it, and he said that he rolled it up and gave it to the customs officer. Now, let us see what Mr. Barrs said. Mr. Barrs stated just as Casperite does that the tug came out with him and Nunez after this conversation, whatever it was, the first conversation, the one to which Holmes testifies. They went back. The house at the head of the dock was the health officer's house. It was, as he says, in very plain sight from the "Laurada." His exact language is that it could be very plainly seen from the "Laurada." Casperite says he saw it very plainly, and that he saw Nunez go into it. Barrs says Nunez did leave the boat and go into it, and afterwards they did come down; that the health officer came with them in the boat; and he even says that the health officer and Colonel Nunez sat in the after part of the boat, just as Casperite testified it was his recollection they did sit. He testifies they did come out to the gangway, this ladder over the side of the vessel; that Captain Dickman stood at the foot of that ladder, and that he entered into conversation with Nunez, and there Mr. Barrs' recollection failed him. He said he could not hear what that conversation was. Casperite heard it. He said he stood at the head of the gangway and heard Nunez say to Captain Dickman, "Get out so fast as you can, the revenue cutter is after you."

Mr. Barrs corroborates him in every particular of his testimony right up to the time when the captain is at the foot of the gangway and Nunez is in the stern of the little boat holding a conversation with him, which Mr. Barrs, their witness, and the only witness they have seen fit to produce on this point, says he could not hear. But the health officer or quarantine officer could have heard it, whom Mr. Barrs says came out with Colonel Nunez and was sitting beside him in the after part of the boat. Why don't they bring the quarantine officer here to say whether he had heard that conversation? Why wasn't he put on the witness stand? But Mr. Barrs, Colonel Nunez's friend and a very decided Cuban sympathizer, corroborates this principal witness of ours, Casperite, in every point up to that conversation, as to the actual position of the men, and then says that that conversation he did not hear. But Casperite heard it, and it was, "Get out so quick as you can, the revenue cutter will be after you."

I submit to you that your obligation is surely in your minds as great to the prosecution as to the defendants; that you would no more hesitate to find this man Nunez guilty if you believe beyond a doubt that reasonable men should entertain he is guilty, than you would hesitate to find him not guilty if you were not convinced of his guilt. If a witness like this sailor, Casperite, is corroborated in almost every petty detail of his testimony by the single witness produced here in opposition, does it not entitle all of his testimony to the very greatest weight with you? It is submitted to the test of hostile testimony, the testimony of a hostile witness, and is corroborated entirely on every point to which that hostile witness has testified. When it comes to the crucial question of the conversation, their witness says: "I did not hear that conversation." Don't let me make any mistake about this. That was asked him again and again, and he said he did not hear it. And yet though he admitted he did not hear that conversation he was led to say to a general question, "Yes, I heard the testimony given here this morning, and it is not true." What is such a general declaration as that worth? This is referring to the conversation which Barrs says was carried on by Nunez and Dickman, and Nunez was in the stern of the little boat and Dickman at the foot of the gangway:

"Q. Was the captain speaking in an ordinary tone of voice to the health officer? A. Yes, sir; I could hear that; I could not hear what he said to Colonel Nunez."

"Q. And the health officer stood aft where Colonel Nunez stood? A. Yes, sir; not over three feet from him."

But the health officer is not here. He is subject to subpœna. In criminal cases a subpœna from this district runs through the United States. Why isn't he here?

"By Mr. HINMAN:

"Q. Did you or did you not hear the conversation between Dickman and Nunez while they were there in the skiff talking? A. I did not; no, sir."

"Q. You did not hear what was said upon their part? A. No, sir."

"Q. You did not hear anything that was said? A. No, sir."

"Q. You don't know what it was? A. Couldn't say a word about what they said."

"Q. You simply saw them in conversation? A. Colonel Nunez was standing up and Captain Dickman stooping down on the platform and they were talking."

And he could not say a word about what they said. Casperite does, and his evidence is entitled to be given the fullest credence. He is shown by this witness Barrs to be absolutely a truthful witness; and his demeanor on the witness stand was the demeanor of a man who would not lie on the witness stand for all there was in the world. I ask you to recall his bearing and his appearance.

After referring to this question of the flag, which created so much amusement among these gentlemen when Casperite testified to it, this question was put to the witness Barrs:

"Q. Did the deputy collector bring that quarantine flag in with him or did the health officer? A. I think the deputy collector brought it down to the boat and carried it ashore."

Even on that point he corroborates Casperite.

Now, what did that vessel do after Colonel Nunez came out? I submit to you, gentlemen, that it is the most improbable thing in the world that Colonel Nunez would have come out there and talked to Captain Dickman and have had no conversation with him about this expedition, no curiosity even to satisfy, one would suppose, from the way in which it has been treated by the evidence. But Nunez came there and told the captain to get out, because the revenue cutter was after him, and the witness Barrs told you that the revenue cutter was up the river at Jacksonville, and that there were always one or two revenue cutters there. I fancy that Colonel Nunez and Captain Dickman had a wise apprehension of revenue cutters. Well, what happened? They went to sea. What does Captain Dickman do? He takes all this ammunition and throws it overboard, and he takes these Cubans up to Charleston and there he puts them ashore. When he left, as I have pointed out to you already, if he had not been going to Jacskonville to connect with somebody for orders, he would never have carried all that ammunition from the point off Cuba where this expedition was landed up to Jacksonville and never have thrown it overboard until he had seen Nunez and got off towards Charleston.

So much for Nunez. He starts with the expedition, stays by it at Montauk Point, gives what amounts to an order to the men in unloading that cargo. He was, on any rational or reasonable view of this evidence, the man who came on from the "Volunteer," who got that bill from Castilio and gave it to the captain and made the captain's declaration good that he would call Nunez back and see if he could get some money. He then appears at Jacksonville. He did come out. Their own witness admits that; and I say that by an unimpeached and truthful witness he is shown to have stated to the captain, "Get out so fast as you can, the revenue cutter will be after you." Now, if you believe these facts, isn't it evident that this man was one of the managers of this expedition; that he was the man to whom the captain first referred in an emergency as the man to settle this dispute with the crew? I leave it to you on that evidence.

Now for the captain. You need to understand that the law is that to furnish, as captain, the means of transportation by merely navigating the ship, carrying one of these military expeditions, if done with knowledge, is an offense against the law. The court will charge you that, because it is the law laid down by the highest legal

authority in the country, the Supreme Court. Captain Dickman starts with this ship from Philadelphia. He comes down the river, and the first thing he does is to take on a big whale boat and four yawls. He has his ship's boats, and he stows those boats away in his hold, and one he keeps on deck. Why did he take those boats on? What were they for? He knew when he took those boats on he was taking them on for some purpose. Will you say what that purpose was? He comes to New York, enters his ship on Saturday afternoon, puts in a manifest, and says nothing about boats, just some pieces of furniture. He comes ashore and gets on board Nunez and these others, and then starts for where? Here is the most important circumstance at this stage of the case. He has cleared for Port Antonio, Jamaica. If he was going to Port Antonio, Jamaica, what would he do? If he went from this city with an innocent purpose, without knowledge that he was going to carry out this arranged plan for an expedition, how would he have gone to Port Antonio? He would have gone outside of Sandy Hook, and gone south; that was his course. But what did he do? He went down the south shore of Long Island and put in at Montauk Point, the very opposite direction from that which he would take to go to Port Antonio, Jamaica. The master of a ship cleared for Port Antonio, going out of this port with an innocent intention and purpose to go to Port Antonio? Oh, no. Rational men cannot draw that inference from that conduct. The only inference you can draw from it is that when he took on those boats in the Delaware River that he knew for what purpose those boats were eventually to be used; when, instead of going south to Port Antonio, he put in at Montauk Point, the opposite direction, he knew that was where he was to go when he started. And here come to this man, if he knows nothing about it, these lighters, all this ammunition. These men take possession of the ship, and what does he do when the crew strike and say they won't go to Cuba? Does he express astonishment and says, "I am not going to Cuba, who says anything about going to Cuba or anything of that sort." These witnesses tell you all that happened as they saw it and heard it. He takes on that expedition, these men and these arms, and goes down and puts that expedition off. Is the prosecution straining a point when it asks you to draw the irresistible inference that I submit must be drawn that when he left this port he did it knowing he had these boats on board and the purpose for which they were to be used; that he left his course towards Port Antonio and put in at Montauk Point evidently with the intent to do it when he left here, knew the cargo he was to take on and which was waiting for him?

Now, it is not necessary at all that the officer of the ship furnishing this transportation should know every detail of the plan. It is not reasonable to suppose he ever will. It is enough that he

should know generally that he is going, when he starts, to take on an unlawful enterprise to Cuba there to wage war against Spain. That is all. He does not need to be familiar with the details, the point they are going to land, or how many men there shall be. That knowledge is not necessary. If he knows that he is going out of the port from which he starts to take on a military enterprise against a power with which we are at peace, he is guilty. He sees that this expedition is landed somewhere in Cuba. He does not go on to Port Antonio; he does not dispose of the cargo; he goes back to Jacksonville, connects with Nunez, goes to Charleston, gets rid of the Cubans, and then goes to Port Antonio. You can infer what the captain's intention was when he left here from the subsequent acts proved. We cannot put ourselves inside a man's mind and say what he knew. That is not the way we arrive at intention. The jury infer intention from the proved acts. A man is expected to intend what he does. And I ask you to take all those circumstances together, and see if you will say that you are not convinced beyond a reasonable doubt that Captain Dickman came to this port in the "Laurada," entered his ship and took it out of this port, knowing before he went that he was to take on off Montauk Point this expedition and take it to Cuba. If you can say on this evidence that he did not know it, that that is not proved to your satisfaction beyond a reasonable doubt, of course, acquit him. But if you give full weight to that evidence to which the prosecution is entitled, and which you are sworn to give it, it seems to me the inference must be the other way. But it is not my opinion that is wanted; it is yours.

The learned counsel in opening this case, making use of somewhat threadbare theatrical devices for sustaining his points entirely outside of the evidence, said to you that he was informed that the district attorney always talked in these cases about the Alabama Case and the charge of damages against the United States. As I have summed up in my life one filibustering case prior to this, it is rather hard and difficult for me to have been frequently in the habit of referring to the Alabama Case and the claims for damages against the United States. But if I were going to talk to you on any such immaterial subject I would not tell you as General Tracy has "that you must acquit the defendant because if you do not your verdict will be an absolute adjudication against the United States that they must pay damages to Spain!" No more absurd statement than that was ever heard in a court room. But I have no reference to make to that.

I have just these general words to say in conclusion: Every government that has the slightest respect for its honorable standing among nations, for even the most perfunctory performance of its international obligations, must prohibit military enterprises from being organized and started from its territory against a power with which it is at peace. An ordinary crime, like counterfeiting or

assault, as the gentleman has said, carries no very remote consequences with it. The offender is punished, and no great number of individuals have been very much hurt. But you cannot tell where crimes like this will end. They may end in war; they may not. There is always the possibility, though, in this sort of a criminal act of very dangerous consequences, wholly different, as General Tracy has said to you, from those which attend ordinary crimes. Such considerations are important to you only to impress upon your mind the seriousness of the controversy; that the obligation is upon you as much to treat the evidence on behalf of the Government wholly uninfluenced by sympathies towards these defendants as it is to give them all those rights to which, by the law of the land, they are entitled.

Under the pretence of not appealing to your sympathies at all, a very eloquent appeal was made to you in opening this case. You will pardon me if I call your attention to it, that you are sworn not to pay any attention to that, and that every man among you has said he can give his verdict unembarrassed by anything of the sort. It is perhaps more important than you think, because this sympathy will influence a man unless he is on his guard, sometimes without his knowing it, where he entertains it as most of you have said you did. You owe it to the laws of your country to enforce them. One would have believed from General Tracy's address that there wasn't any law on the statute book against this sort of thing; or, if there was, and even if this was a violation of it, you ought not to enforce it. Such a method of arguing to a jury seems to me scandalous. Perhaps a defendant's lawyer has more license than a prosecuting attorney. But I cannot imagine the case in which, if I were defending a man, I should say to the jury, even by innuendo, "that though it is the law and is or has been violated, it is a violation in a magnificent cause; that the accused are trying to help a people struggling for their liberty, therefore do not enforce the law." That is the innuendo. You cannot punish crime in that way. It is far more dangerous to let continue this flagrant contempt of the law that arises from the continued unpunished criminal operations of men on our soil seeking to help a people as noble as you may please, if you care to take that view of it, who are in armed conflict with a country with which we are at peace. Our own citizens cannot be permitted to do it. There are laws prescribing the way that we shall declare war against another country, if we want to do it. Our citizens cannot go to work and engage in war with a power with which we are at peace. Congress must do it, the legislature must do it; it must be done pursuant to law. It is a most discreditable and dangerous thing that men shall be allowed to do what this evidence shows beyond any reasonable doubt these two men did, and through either the sympathies or supineness of juries go unpunished for it.

I submit that all I ask is that you shall treat this evidence fairly; that you shall not allow your minds to be influenced or embarrassed in any respect by the statement of counsel in respect to what the evidence is, but that you shall follow your own recollection of what it was. That you will especially remember, as I have pointed out to you in great and conclusive detail, that this one witness called by them, Barrs, corroborates our principal witness, Casperite, in almost every detail; and that in respect to the crucial point of Nunez's conversation with the captain, that he did not hear that conversation; that he is in conflict with none of our witnesses, except the witness Holmes, who says that Nunez said from the tug, "Get out to Charleston; clear out and go to Charleston," and even on that he admits there was some conversation in Spanish and some in English, and says it was only in regard to the captain's health. Furthermore, the incident testified to off Montauk Point about Nunez coming back, and his connection with the obtaining of this money by the captain, and the giving it to the crew, is not contradicted by the captain of the "Volunteer," but is corroborated and proved to be true by his testimony.

I submit to you that you must treat these witnesses fairly. The crossexamination of them has been a mere attempt to show that because they have been paid, as they ought to be paid, and detained for five or six months, that they are not to be believed at all. But you are to take the whole subject matter, the probability of this story, the demeanor of the witnesses in testifying everything connected with this case, and make up your minds whether they are telling the truth or not. In considering the guilt of these people, single circumstances are not to be picked out and treated separately, or any ingenious reasoning indulged in in regard to what may lawfully be done under this statute and what would be unlawful. It is true that if men want to engage in a commercial operation and ship arms to Cuba, or men want to go voluntarily with the purpose when they get there of joining the insurgent forces, there is nothing unlawful in that. The point is the intention with which they leave the place where they are charged with having committed the crime. It is for you to take all of this evidence together, not a piece here and there, but the whole of it and decide whether it convinces you beyond a reasonable doubt that these men were participating in the beginning, setting on foot, providing or preparing the means in this district for a military enterprise. The court will define to you what that is. I leave the case with you.

CHARGE TO THE JURY.

BROWN, J.: As has been rightly stated to you, gentlemen, by counsel, this is a case of more than usual interest and importance; because it not only affects, as has been said, the individual

defendants and their relations perhaps to a few persons, but it involves also indirectly international relations. The series of laws or enactments, of which the statute under which this indictment is framed is one, known usually as the Neutrality Laws, were enacted long since, and substantially in the same form in which they exist to-day, during the administration of Washington in 1794. These enactments pretty much covered what it was considered necessary to provide in order to prevent entanglements between this Government and foreign powers, by prohibiting expeditions from this country interfering with belligerents, or with the relations between a mother country and its insurgent people, in such a way as to entangle us, and become justly a subject of contention, and in that way, if not checked, liable to lead us into serious complications. For that purpose this statute of 1794, embracing a number of different provisions, was passed to endeavor to check the various forms in which these evils might arise. I have regarded it from the first as of some consequence to look at that statute as a whole, because what it prohibited, as well as what it did not prohibit, was such as to throw some light upon the different parts of the statute, and show what was intended. This will aid in the interpretation, inasmuch as in the section under which this indictment is drawn, there is such generality of language as to lead to some difficulty or perplexity in its application to particular cases. This observation upon the statute is not my own. It was made by Chief Justice Marshall only a few years after this statute was passed, when he said that there was in this section "a lack of precision in defining the offence, which might hereafter lead to difficulty in its application." It is for that reason that I ask your attention for a few moments to the different provisions of the law, that you may understand more clearly the differences between what is lawful, and what is unlawful within our statute. I should say that there have been one or two minor amendments to this statute since it was passed; but they are of quite a minor character, and in no way affect this prosecution. The old law has been embodied in the provisions of the Revised Statutes, adopted in '74, and is now referred to in different sections of the Revised Statutes.

Section 5282 deals with the enlistment of individuals. Section 5286, under which this indictment is framed, deals with military expeditions or enterprises. Section 5283 deals with armed cruisers, designed to commit hostilities in favor of one foreign power as against another. The section which deals with the enlistment of individuals, Sec. 5282, prohibits any person from enlisting in this country as a soldier in the service of a foreign power. It also prohibits any person from hiring or retaining any other person to enlist or to go abroad for the purpose of enlisting; but it does not prohibit any person, whether he is a citizen or not, from going

abroad himself for the purpose of enlisting in a foreign state or foreign army.

By our legislation, therefore, on this subject, as is evident from this statute, and from what is prohibited and what is not, that individuals are permitted to go abroad to foreign countries to enlist, when they do so voluntarily and without being induced by other persons, or without hiring, and there is no enlistment in this country. So there is nothing in this statute which prohibits a commercial enterprise. The transportation of goods in a commercial way, whether it be contraband of war or not, is not prohibited by the fact that other nations are at war, or that a colony is in a state of insurrection against the parent country. As there is no prohibition against persons going individually to enlist in foreign armies, so it is competent for them, as a necessary incident to this right, to go in company with one another, one or a dozen or a hundred, and in any way they see fit, so long as they do not infringe the only provision bearing upon that subject, namely, that they do not constitute any military expedition or enterprise. It is the same with the transportation of goods. So long as it is a commercial transaction, so long as it is a peaceable transportation by a vessel either of goods, or of men, and is without any features of a military character, such as would constitute it a military enterprise or expedition, our statutes do not prohibit it.

The first question, then, which you have to consider, is whether there was in this case a military expedition or not; whether the facts proved before you show that there was what should be properly termed a military enterprise. The indictment is either for beginning or setting on foot a military enterprise or for providing the means for it. If you do not find there was any military enterprise at all, of course that ends the case.

What constitutes a military enterprise? What are some of the features that mark a military enterprise or expedition as distinguished from a peaceable transportation of passengers, arms, ammunition, or goods? The essential features of military operations are evident enough. They are concert of action, unity of action, by a body organized and acting together, acting by means of weapons of some kind, acting under command, leadership. These are the three most essential elements of military action. On this subject I will read a few passages from the recent case of the "Horsa," which was before the Supreme Court, in which this subject is touched on in three or four paragraphs. Chief Justice Fuller in referring to this point says as follows:

"The definitions of the lexicographers substantially agree that a military expedition is a journey or voyage by a company or body of persons, having the position or character of soldiers, for a specific warlike purpose; also the body and its outfit; and that a military enterprise is a martial undertaking, involving the idea of a bold,

arduous and hazardous attempt. The word 'enterprise' is somewhat broader than the word 'expedition'; and although the words are synonymously used, it would seem that under the rule that its every word should be presumed to have force and effect, the word 'enterprise' was employed to give a slightly wider scope to the statute."

In quoting from the opinion of the court below in approval, the court say:

"If the persons referred to had combined and organized in this country to go to Cuba and there make war on the government, and intended when they reached Cuba to join the insurgent army and thus enlist in its service, and the arms were taken along for their use, that would constitute a military expedition, and the transporting of such a body from this country for such a purpose would be an offense against the statute."

Again the court say in approval:

"Any combination of men organized here to go to Cuba to make war upon its government, provided with arms and ammunition, we being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, artillery or cavalry. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, and to have provided themselves with the means of doing so."

And once more:

"If they intended to stand together and defend themselves, if necessary, the jury had a right, under the circumstances stated, to find that this was a military expedition or enterprise under the statute."

Under these rulings and definitions of the Supreme Court, I must instruct you that if you find upon the evidence that this body of men, when they landed in Cuba, landed with arms in their hands, which had been provided for their use; that they were then organized together in such a way as that they should stand by each other and fight their way if necessary, and defend themselves, or make attack, as the case might be, that would be in fact a military descent upon the island of Cuba, and the organization or combination would be a military combination—a military enterprise. If you do not find from the evidence that state of things existed, then you will dismiss this case; for if a military expedition is not shown to have existed at that time, it certainly did not exist before. If you do find that the character of that landing was military in its form and substance—namely, a body of men combined and organized, intending to stand by each other for attack or defense, and having arms in their hands for that purpose when they landed—then you find a

military expedition at that time; and the question will then remain for you to determine whether that was the expedition intended when they left the harbor of New York; and, if so, whether these defendants, or either of them, were privy to it, or provided the means for it.

I shall refrain from commenting to any extent upon the evidence, as it is so freshly before you, and has been commented upon so fully by both counsel. I have already said that the transportation of arms and the transportation of men may be perfectly lawful. By way of illustration I will say further that, for aught I can perceive, if this same association or group of individuals had been taken by the "Laurada" to the coast of Cuba, to the very spot where they landed, and they had been put ashore in these same boats, and these boxes containing ammunition and other military implements had not been opened or distributed, but had been landed like merchandise,—for aught I can see, that would have been purely a non-military landing, and there would have been no military enterprise. It would have been a case of smuggling; the endeavor to smuggle arms and ammunition for the help of the Cubans in Cuba; and the endeavor of individuals to go there secretly and join the Cuban army, both of which are perfectly lawful, so far as this country is concerned. Those who engage in it take the risk of the Spanish authorities, that is all.

Now, what are you to infer from all the other evidence in the case as to the nature of this expedition when the "Laurada" left New York? The charge is that the defendants in the southern district of New York begun or set on foot or provided the means for a military expedition. If you find that this was a military expedition when it landed in Cuba, do you find that it was so within the knowledge of the captain (taking him first) when the "Laurada" left New York? In an indictment of this kind it is a necessary averment that the offense took place in some district, and that must be proved as stated in the indictment. Here it is alleged to have been done in New York. If this landing, in the form described, was not the undertaking that existed when the "Laurada" left New York, or if the captain did not know of it, he is not liable. But in order to constitute an unlawful expedition "to be carried on from this country,"—for that is the language of the statute—and to be carried on from the city of New York, it is not necessary that everything shall be complete when it leaves this district. The statute says: "Every one who shall begin or set on foot" such an expedition. Therefore, by way of illustration again, if a person takes part in collecting a body of men, and in collecting arms and equipment with the intent that those shall be combined afterwards so as to form a complete expedition, I must say to you that that is a beginning or setting on foot of the expedition which is planned from the first and which is afterwards com-

pleted. Such an enterprise falls within the statute. It is an enterprise which would be begun and set on foot here, provided the first important steps were taken here, with the intent to have it completed afterwards, and it was completed in accordance with that intent. If then, when this vessel sailed from New York, there was no intention to make an armed descent upon Cuba, but a mere peaceable transportation of merchandise, of munitions of war, and the peaceable transportation of men as individuals, without any military form or military force at Cuba, then there is no case: the subject matter, the unlawful expedition has not arisen. But if these men were collected together here, and were forwarded in the ways you have heard alleged, and if the munitions of war and war material were collected together here with the intent to have them combined, and to form a military descent upon the island of Cuba, then that enterprise, that undertaking, was begun here.

If you find that was the case, then you will next inquire whether either of these defendants were concerned in beginning or setting this expedition on foot, or whether either of them provided the means for it, in this district. At the commencement or beginning or setting on foot of whatever was done, the testimony is not very complete. The expedition, you will observe, is not the vessel; the vessel is a mere means of transportation. The vessel was not a war vessel; it is very evident that the vessel contemplated no fighting. She was only a means of transportation. But the persons who furnished the vessel at New York, and who started her from New York, in pursuance of a plan to transport an expedition that was intended from the start to be a military expedition, would be providing the means for that expedition; and whoever furnished the vessel, knowing that intent, would be liable under this statute, as providing the means for the enterprise. If the captain, therefore, as the master of the ship, understood that this expedition was to be a military descent upon the island of Cuba, or, to put it in another way, that the men were to be landed in a body armed and drilled, ready to stand by each other and to defend themselves, if he understood that when he left this city, he is guilty. If he understood nothing of that, or if you are not satisfied beyond a reasonable doubt that he must have understood that, then whatever else there may be in the case, it would be your duty to acquit him.

It is true, as has been urged upon you by counsel, that matters of precaution or secrecy, irregular modes of transportation, are consistent with a peaceable transportation of contraband of war. In any case, the hazards of loss are so great that the only prudent course for persons who are engaging even in a perfectly lawful enterprise of that kind, would be to make their proceedings as secret as possible. It is, however, equally consistent with an unlawful purpose. If the purpose was a military descent, there is the same necessity for secrecy, and the same result in that respect would follow.

Now, in regard to the captain. There are very strong circumstances to show that this voyage was not intended to be simply a voyage to Port Antonio. So much, it is plain, he must have understood. He took on extra boats in the Delaware River. They could be used, it is true, for the landing of the cargo at Cuba, for the Cuban army, in a perfectly legitimate and lawful manner. That circumstance is not of itself indicative of guilt, or even of an unlawful expedition. It is precisely what would be done for the smuggling of these goods into Cuba, if it was a smuggling expedition that the captain intended; or if it was the landing of individuals merely for the Cuban army. To elude the Spanish vessels, it was necessary as much for the lawful enterprise as it would be for the unlawful. You will understand, gentlemen, that I am speaking of lawful in reference to this country. So, in going to Montauk Point. If the captain were directed to go to Montauk Point and there await orders, or to wait for cargo to be landed on the Cuban coast, he would understand that his voyage was not for Port Antonio direct, but that he was to be engaged in some kind of irregular transportation for Cuba. He may not have known for what destination, but when he left New York it was plain that he must have known, as I should infer—and these matters, gentlemen, are all for you; what I observe on matters of fact you are to give no weight to except as they commend themselves to your judgment—but when he went to Montauk Point, away from his course towards Port Antonio, he knew that something else was to take place. Ordinarily, it is reasonable to suppose that persons intend what happens under their administration. The captain is the master of the ship. What is done on board the ship, if it is a matter that would naturally attract attention, or would come to the attention of the officers of the ship and be reported to him, it is fair to assume must be known to him. There is no evidence from the several witnesses who have come here from the ship tending to show that there was any objection on the part of the master, or of anybody else belonging to the ship, when these cases were opened and the arms distributed. If there had been evidence of that kind, that would have tended to show that that was a surprise to the master; something different from what he anticipated. The absence of such testimony, while it is not conclusive, is a circumstance which you take into account.

The captain in civil matters is held answerable for what takes place upon his ship. He is supposed to know what takes place, and to accede to what takes place, unless the contrary appears; because he is the supreme commander. If from what there is before you, you consider that there is no reasonable doubt but that the master acquiesced in what has been described and made no objection to it, you will be authorized to find that he understood that what was done was expected to be done, certainly, when he left Montauk

Point. Up to Montauk Point, however, there had been three persons come on the ship with him; the defendant Nunez for one, Dr. Castillo another——

Mr. MACFARLANE. He was on the tug boat. Captain Morton went, according to the testimony.

The COURT. Yes, it was he, Captain Morton. There is no evidence here as to when Captain Dickman received his instructions on any of these subjects. We only know he left New York harbor with these two gentlemen, civilians, on board, who went with him to Montauk Point, and remained there until these arms and men were shipped on board and then left, and then he pursued his voyage, and you have the armed landing on Cuba.

A defendant is entitled to all reasonable presumptions in his favor. In order to convict, you must find in your own minds beyond a reasonable doubt, that the defendant Dickman knew the purpose of this expedition, and that it was intended to be a military descent upon Cuba. It is for you to draw your inference on that subject from all the circumstances before you. The court cannot aid you, and must not attempt to take your place. If you are satisfied beyond reasonable doubt that the captain understood in substance that it was intended that that should be done which was afterward accomplished—if he understood that when he left the harbor of New York—then it is your duty to convict him. It is not necessary that he should have understood every detail, but it is necessary that he should have understood sufficient of the facts to show that an expedition of an unlawful character was planned, and that he was expected to carry it out by furnishing transportation for it. If you are satisfied of that, then it is your duty to convict. If you are not satisfied of that beyond reasonable doubt, it is your duty to acquit him.

In regard to the defendant Nunez, there is no evidence to show that he had any part in the collection of the men, in the purchase of the arms, in the hiring of the tugs, in the ownership of the vessel or the chartering of the vessel, if she was chartered; and, so far as I recollect, no evidence that he had done anything to promote this expedition until the arrival at Montauk Point, where he had gone on board.

Mr. HINMAN. Where he was on board. He went on board in New York.

The COURT. Yes, he went on board in New York. The statute in this case does not include the words "aiding and abetting" expressly. What is prohibited is to begin or set on foot such an enterprise. I do not perceive anything (and if I am in error about this, I will ask counsel to correct me) tending to show that the defendant Nunez did anything in regard to this expedition, either as regards the men or the vessel or the arms within this district—any direct evidence, I mean—towards setting it on foot or beginning it.

The rest of the statute is against providing or preparing the means for it. If the defendant Nunez did either of these things in the city of New York, then it is your duty to convict him, if you find that this was a military enterprise. Unless you find he did some one of those four things, it is your duty to acquit him; that is to say, took some part in beginning or setting on foot this expedition, or else providing or preparing the means for it within this district.

I said there was no direct evidence of any act of his done here. The reliance of the government, as I understand, is upon the indirect evidence, which they claim warrants your conclusion that he was the manager of the expedition. To illustrate once more. If the defendant, Nunez, was a mere passenger on board the "Laurada" when she went down to Montauk Point, and there at the captain's request gave him $100 to satisfy the requirements of the crew, if that was all that Nunez had to do with this enterprise and had nothing to do with it in fathering it before that, that act was not done within this district, and he is not liable for that. So in regard to what happened in Jacksonville harbor or at Mayport. But if he did go there, and if he went to Mayport or Jacksonville to be on the watch for the "Laurada" when she should have finished her work in Cuba and returned to Jacksonville according to appointment, and met her there in order to give her further instructions; if that was part of a pre-arranged plan, or if the evidence that has been given her warrants, in your judgment, your finding that, then that would point very strongly to show a connection with the enterprise as a principal; and that, as I understand, is the contention of the government. Not that those single acts, not that the payment of $100 at Montauk Point, makes him liable for that act, nor the order or request that the ship should go to Charleston, if he did give it; but that these things, if you credit the evidence that they were done in the way the Government contends for, indicate so strongly the relation of Nunez to this enterprize that you are warranted in finding that he was the manager of it from the start; and that therefore he was concerned in setting it on foot in the harbor of New York. The fact that nobody else is shown to have very much connection with it cannot weigh much with you in finding that it was Nunez. It is only upon affirmative evidence, that is to say, direct evidence, and the circumstances, and such inferences as may be rightly and reasonably drawn from such evidence, that you can convict in a criminal case.

The evidence, as I said a few moments ago, of who it was that set on foot this expedition and managed it here, is very meagre. There is some direct evidence in relation to Dr. Castilio and Mr. Espin and General Ruiz—some direct evidence of their action here, but none as regards the action of Nunez here in fitting out the expedition.

Mr. MACFARLANE. If your honor will permit me, I would like to

call your attention to the fact that the evidence shows that Colonel Nunez went with General Ruiz on the "Laurada." General Ruiz was one of the men who went on board the steamer here.

The COURT. Yes; I know. He went on board the "Laurada."

Now, gentlemen, it is for you to say whether you are satisfied, as reasonable men, and beyond reasonable question, from the circumstances of this case, that Mr. Nunez was engaged in setting on foot this expedition; that he was engaged in the planning it here, and planned to make it such a military expedition as was landed in Cuba. If you are satisfied of that beyond reasonable doubt, it is your duty to convict him; otherwise not.

Some other observations will be necessary in commenting upon the various requests to charge that have been made, and I will take them up seriatim. Many of these, I think, I have covered already; but, perhaps, it will be shorter for me to read them.

Defendants' counsel have asked me to charge as follows:

"To constitute a military expedition, within the meaning of our statute, it must be proved in this case beyond a reasonable doubt that a body or company of men combined and organized in this country to go to Cuba and make war on the Spanish government, that the arms supplied them were supplied for that purpose, and that they were acting under some leadership for that purpose."

I charge that must appear, or else that the beginning of such an organization was started in this country with the intent to complete it so as to make a military descent upon the island of Cuba; one or the other.

I further charge you, as requested:

"That it is entirely lawful for a number of men to leave this country, with the intent to go to Cuba and there join the Cuban army and fight against the Spanish government, and that the transportation of such a body of men, knowing their intention, does not constitute the aiding or abetting or setting on foot of a military expedition or enterprise, and is not an offense within the meaning of our statute.

"It is entirely lawful for an American citizen, or any other person residing in the United States, to sell and ship arms to the Cuban army in Cuba, or to sell to the agents of the insurgents in this country, with a view to their being shipped to the insurgents in Cuba, there to be used against the Spanish government, and that such act is not unlawful, even although it is done with the intent thereby to aid and assist the insurrection in Cuba."

I charge you that.

The fact that the men are transported and the arms and ammunition carried in boxes as merchandise upon the same ship, does not of itself constitute a military enterprise or expedition within the meaning of our statute.

And I add to that that the intent of the men to enlist after they get to Cuba does not make an expedition, which is otherwise lawful, unlawful.

I further charge you as requested, that if you find the expedition as fitted out was an unlawful expedition or enterprise, but that no knowledge of the facts which constituted it an unlawful expedition or enterprise came to Captain Dickman's knowledge until after he left the port of New York, he must be acquitted.

Also, that to convict the captain of the ship you must find from the evidence, not only that the enterprise was an unlawful one within the meaning of the statute, but that the captain had in New York knowledge of sufficient facts to show that an unlawful enterprise or expedition was contemplated.

Even should the jury find that the captain, before he left New York, knew that he was to transport from off Montauk Point on the "Laurada" a number of men and a cargo of arms and ammunition, that alone is not enough of itself to convict him. The jury must also find that before leaving this district he had reason to believe that the men and arms were to be so combined on the way to Cuba as to constitute a military expedition, within the meaning of the statute.

I also charge you that it was entirely lawful for the captain to engage in the secret transportation of arms and ammunition intended for the Cuban service in Cuba, in a commercial and non-military way, and that any step taken by him to conceal from the Spanish man-of-war, or the agents of the Spanish Government, the fact that he was about to engage in such an enterprise, is as consistent with a lawful purpose as it is with an unlawful purpose, and therefore is not of itself any certain evidence of guilt against the captain of the ship.

Inasmuch as the transportation of passengers and merchandise in a perfectly lawful way would be accompanied with danger, therefore it would be only the part of prudence in those who would wish to conduct a perfectly lawful enterprise to be cautious, careful, and to take all the means of secrecy possible to prevent the anticipation and thwarting of the enterprise.

I charge you that the mere fact of secrecy or mystery that might hover around such enterprises as have been described does not of itself give it an unlawful character.

In regard to Nunez I also charge, as requested, that the presence of Nunez on board the "Laurada" off Montauk Point and his visit to that vessel off Jacksonville are not in themselves alone suffiicent to prove that he began, set on foot, prepared or provided the means for a military expedition or enterprise.

To convict Nunez you must find, beyond a reasonable doubt that before leaving the southern district of New York he either

began, set on foot, prepared, or provided the means for a military expedition or enterprise, or took part in some one of those things.

Even if you find that Nunez, within the southern district of New York, had knowledge that the "Laurada" was going to carry men, arms and ammunition to Cuba, you must acquit him, unless you also find that he did some act towards beginning, setting on foot, preparing and providing the means for a military expedition or enterprise.

Even if Nunez knew that arms and ammunition would be carried on board the "Laurada," you must acquit him, unless it is proved beyond a reasonable doubt that he knew, within the southern district of New York, that these men and arms would be so combined as to constitute a military enterprise.

Instead of "knew" I should say "had reason to believe and intended, within the southern district of New York, that these men and arms would be so combined as to constitute a military enterprise; and that he did some act towards beginning, setting on foot, preparing or providing the means for a military expedition or enterprise."

Finally, I charge as requested, that if the jury find that all the evidence and circumstances relied on to show guilt, taken altogether, are as compatible with the theory of innocence, or with the theory of an innocent undertaking, as with the theory of a prohibited undertaking, it is their duty to find the defendant not guilty; for that would constitute a situation of reasonable doubt, the benefit of which must be given to the defendant.

I am requested by the Government to charge that if the jury believe that the arms were opened on the ship, and the men armed before landing, and drilled during the voyage, and landed with the arms in the manner testified to, then the expedition or enterprise was military. I state that the jury would be authorized to find from these facts that it was a military expedition.

I am requested to charge you also by the Government that if the captain knew when he left New York that he was going to take in his ship a body of men and a quantity of arms, which the men intended from the start to use in warlike operations against Spain, in Cuba, he is guilty.

I shall need to qualify that. I shall say that if the captain knew when he left New York that he was going to take in his ship a a body of men and a quantity of arms, which the men intended from the start to use in making a hostile landing or a military landing in the sense I have stated, he would be guilty. I qualify that, because the men might have intended to use them only after they had enlisted in the army.

How about the third request; do you want me to charge that?

Mr. MACFARLANE. I withdraw the third request. I ask your honor to call the attention of the jury to this, that in determining

the guilty intention of these defendants in leaving this jurisdiction they must consider all the evidence of what happened afterwards.

The COURT. That is right.

Mr. MACFARLANE. And if they believe that the defendants in leaving this district had the intention to do those things in furtherance of this project, then they are warranted in finding him guilty of the offense charged.

The COURT. Yes. I intended, gentlemen, to say to you also that in all such cases the commission of such an offense is almost never to be proved by a single piece of evidence or a single witness. You judge from the testimony all together, piece by piece, part by part, one thing that fits into another; and in judging the motives and intentions, and knowledge particularly, it is impossible to judge otherwise than from the circumstances; the history of events as they succeed each other. You judge of it, therefore, as a whole, and you take the testimony together as each part bears upon the other, so far as you credit it, and from these elements you draw your conclusion.

Mr. TRACY. I ask your honor to charge the jury that in order to convict the captain they must be satisfied from the evidence introduced on the trial beyond a reasonable doubt that he knew before he left New York that the guns, the ammunition, and the men were to be so combined on their way to Cuba as to make a military descent upon the island; and that if that knowledge came to him after he reached Montauk Point or on his way to Cuba, then it is their duty to acquit.

The COURT. I think I did state that substantially, perhaps in a little different form. I have no hesitation in stating substantially the same thing again, if I did not so state. I think I said unless the jury were satisfied that the captain within the southern district of New York had reason to believe, either knew or had reason to believe, that these arms and men were to be combined so as to form a military enterprise at the time they landed in Cuba, that he should be acquitted.

Mr. TRACY. The criticism I have to your honor's charge, and the only criticism in that respect, is that you leave out that they must be satisfied from facts proved, not imaginary speculation.

The COURT. Undoubtedly.

Mr. TRACY. That the facts proved must satisfy them beyond a reasonable doubt that he did know.

The COURT. Gentlemen, that goes without saying. You are not to imagine a person guilty, or convict him because you might fancy he may be. What you are authorized to go upon is the evidence in the case as a whole, and the inferences that as reasonable men you are warranted in drawing from that evidence. It is not speculation, not possibilities, not imaginings, not mere surmises of any kind; but those rational conclusions which you cannot help draw-

ing as reasonable men from the facts proved. That is what I mean. You take the facts proved, and from them you are bound to draw such reasonable inferences as flow from them, because the facts proved are evidences of knowledge or intent so far as they reasonably go. It excludes all mere surmise, mere imagining, mere fancy; but it includes all those rational conclusions which as reasonable men you cannot help drawing. With these comments and that explanation, I say to you that the evidence must show, and show in that way, that he had that knowledge, or that means of knowledge, or that reasonable belief.

Mr. RUBENS. We except separately to your honor's refusal to charge each of our requests as put and without modification.

The COURT. Yes.

Mr. TRACY. And we also except to the modifications as made. I desire also to except to that part of your honor's charge in which you submit to the jury to find whether or not Nunez did any act in the city of New York towards setting on foot or preparing for the transportation of this expedition. I except to that on the ground that your honor, having charged that what he did at Montauk Point would not constitute him guilty, that there is no evidence of any fact proved, no evidence of any act committed by him in the city of New York that tended in any way to set this expedition on foot, and therefore there is nothing on which the jury could find such a fact as that.

Mr. MACFARLANE. I did not understand your honor to charge the jury that what he did at Montauk Point would not be sufficient to find him guilty if they found that he did it with intent to further an expedition which he had aided and abetted in when he left New York.

The COURT. If both counsel so far misunderstood what the court intended to say, I think possibly the jury may have misunderstood equally, and that I had better state once more what I did intend to say. What I intended to state to the jury was this: That the act of Nunez in giving $100, if you should believe the evidence upon the Government's side that he did give $100 to the captain for the purpose of quieting the men—I say that act alone would not constitute any ground for finding him guilty, for the reason that the act was done outside the district of New York, which is the district where the indictment charges the offense to have been committed. If that was the only thing in the case, that act alone would not support the indictment by itself. And so with what took place in Jacksonville. I said, however, that as I understood the Government's contention, its claim was not for those acts as independent acts, but that they were very strong evidence that he was the father of this expedition, that he was the manager or principal who was setting on foot the enterprise, attending to it, managing it, carrying it out. It is for you to judge of the strength of that testimony. If you believe

it in the shape in which it was presented to you by counsel for the Government, it still remains for you to consider what conclusions that warrants, how far it is sufficient to sustain the claim of the Government that he was the manager of this expedition. It is only as evidence upon that question that I consider it has any bearing upon this case.

Mr. TRACY. I desire to except to that part of your honor's charge even as modified. I submit that does not warrant any such conclusion.

The COURT. I leave that to the jury. I express no opinion as to its weight or force.

The jury then retired, and having failed to agree they were subsequently discharged.

REPORT

TO

Don E. Dupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX III.

PART II.

UNITED STATES VS. HART, PHILADELPHIA (1897)

IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES
vs.
JOHN D. HART.

INDICTMENT.

In the District Court of the United States for the Eastern District of Pennsylvania.

November Sessions, 1896.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

1. The Grand Inquest of the United States of America, inquiring in and for the Eastern District of Pennsylvania, upon their respective oaths and affirmations, respectively do present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, one John D. Hart, late of the District aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully begin and set on foot a certain military expedition, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

2. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully begin and set on foot a certain military

enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

3. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully, and unlawfully provide the means for a certain military expedition, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the time herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

4. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully provide the means for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

5. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further pre-

sent, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully prepare the means for a certain military expedition, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

6. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully prepare the means for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

7. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully provide the means, to wit, a steam vessel, known as the "Laurada," and certain seamen to sail the same, and supplies and provisions, for a certain military expedition, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit,

against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress, in such case made and provided and against the peace and dignity of the United States of America.

8. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully provide the means, to wit, a steam vessel, known as the "Laurada," and certain seamen to sail the same, and supplies and provisions, for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

9. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully prepare the means, to wit, a steam vessel, known as the "Laurada," and certain seamen to sail the same, and supplies and provisions, for a certain military expedition, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

10. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations, as aforesaid, do further pre-

sent that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully prepare the means, to wit, a steam vessel, known as the "Laurada," and certain seamen to sail the same, and supplies and provisions, for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

11. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations, as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully, and unlawfully provide the means for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, the said John D. Hart so providing the means for such military enterprise aforesaid in that he, the said John D. Hart, did on or about the date last aforesaid, provide a certain steam vessel, known as the "Laurada," at the port of Philadelphia, Pennsylvania, in the district aforesaid, and did then and there provide coal and provisions for the said vessel, placing the said coal and provisions aboard her, and did then and there employ certain men to navigate said vessel, which said vessel did then and there, at his instance and by his direction, proceed down the Delaware river into the Atlantic ocean, and thence northward to a point on the high seas off the coast of New Jersey, where the said vessel was met, under preconcerted arrangement, by a certain steam launch known as the "Richard K. Fox," containing men, and a certain lighter, containing arms and ammunition, and towed by a certain steam tug known as the "Dolphin," which said men and arms and ammuni-

tion were then and there transferred to the said "Laurada" and thence carried by it to the island of Navassa, in the Caribbean sea, where the said men and arms and ammunition were transferred from the said "Laurada" to a certain steam vessel known as the "Dauntless," and by it landed on the shore of Cuba, the said men acting together under a preconcerted arrangement, and he, the said John D. Hart, well knowing and intending that the said men and arms and ammunition should be so transported and transferred and finally landed on the shore of Cuba for the purpose of effecting a military enterprise as aforesaid, and making war upon the territory and dominions of the King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

12. And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do further present, that heretofore, to wit, upon the fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six, the said John D. Hart, late of the district aforesaid, yeoman, at the district aforesaid, and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, knowingly, wilfully and unlawfully prepare the means for a certain military enterprise, to be carried on from thence against the territory and dominions of a foreign prince and state, to wit, against the colony and district of Cuba, which said colony and district at the times herein mentioned was, and still is, a part of the territory and dominions of the King of Spain, the said United States then and there being at peace with the said state and with the said King of Spain, the said John D. Hart so preparing the means for such military enterprise aforesaid in that he, the said John D. Hart, did on or about the date last aforesaid, provide a certain steam vessel, known as the "Laurada," at the port of Philadelphia, Pennsylvania, in the district aforesaid, and did then and there provide coal and provisions for the said vessel, placing the said coal and provisions aboard her, and did then and there employ certain men to navigate said vessel; which said vessel did then and there, at his instance and by his direction, proceed down the Delaware river into the Atlantic ocean and thence northward to a point on the high seas off the coast of New Jersey, where the said vessel was met, under preconcerted arrangement, by a certain steam launch known as the "Richard K. Fox," containing men, and a certain lighter, containing arms and ammunition, and towed by a certain steam tug known as the "Dolphin," which said men and arms and ammunition were then and there transferred to the said "Laurada," and thence carried by it to the island of Navassa, in the Caribbean Sea, where the said men and arms and ammunition were transferred from the said "Laurada" to a certain steam vessel known as the "Dauntless,"

and by it landed on the shore of Cuba, the said men acting together under a preconcerted arrangement, and he, the said John D. Hart, well knowing and intending that the said men and arms and ammunition should be so transported and transferred and finally landed on the shore of Cuba for the purpose of effecting a military enterprise as aforesaid and making war upon the territory and dominions of the King of Spain, contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

JAMES M. BECK,
United States Attorney.

November 16, 1896.

BILL OF EXCEPTIONS.

In the District Court of the United States for the Eastern District of Pennsylvania, November Sessions, 1896.

UNITED STATES
vs.
JOHN D. HART. } No. 34.

Be it remembered, that in the said November Sessions, 1896, came the said United States into the said court and impleaded the said defendant in a certain indictment in which the said defendant was charged with an offence under Section 2586 of the Statutes of the United States of America, and to which indictment the said defendant pleaded "Not guilty," and thereupon issue was joined between them.

And afterward, to wit, at a session of said court held in the District aforesaid before the Honorable William Butler, judge of the said court, on the sixteenth day of February, 1897, the aforesaid issue between the said parties came to be tried by a jury for that purpose duly impaneled (prout list of jurors), and came as well the said United States, by James M. Beck, Esq., United States District Attorney for said District, and Francis F. Kane, Esq., Assistant United States District Attorney, and the said defendant by his attorneys, John F. Lewis, Esq., and William W. Ker, Esq., and the jurors of the jury aforesaid being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the said trial the witnesses for the said United States were called and sworn, and examined as follows:

Mr. Beck offered in evidence and read to the jury two proclamations of the President of the United States, dated respectively June 12, 1896, and July 27, 1896.

WILLIAM H. ROUCH, sworn. Examined by Mr. KANE:

I am boarding officer of the port of Philadelphia, under the United States Government. My duties are to board incoming foreign vessels, examine their papers, certify to their manifests, and make report on the same to the surveyor of the port. In the execution of my duties I boarded the "Laurada" on July 28th, 1896, when she arrived at Philadelphia. She had a cargo of fruit, bananas, and came from Port Antonio, Jamaica. My business is with the captains of the vessels. I did not see Mr. Hart. I filed two reports, one in the inspector's office, and the other in the surveyor's office.

WILLIAM C. FINLETTER, sworn. Examined by Mr. KANE:

I am inspector of customs at the port of Philadelphia. I went on board the "Laurada" on July 29th, 1896, to examine her and give the clearance to the captain. She was making preparations for leaving that day. She was taking on a few things that were manifested, one of them was a big safe.

ROBERT T. GILL, sworn. Examined by Mr. BECK:

I am the registry clerk in the Philadelphia custom house, and make out the original registers, and take the oath of the owner, and other matters connected therewith. I am acquainted with the steamship "Laurada," with her register. She was formerly the British steamship "Empress." She became an American vessel by Act of Congress of January, 18th, 1895. Her first registry was granted to William W. Ker. The owner before that was John D. Hart. A bill of sale from William W. Ker to the J. D. Hart Company, an incorporated company, is recorded, dated January 20th, 1896. The next transfer is on April 14th, 1896, from the J. D. Hart Company to John J. Molan. I do not know him, but I have seen him at the custom house to sign the owner's oath. The vessel is still an American vessel.

JACOB F. BURNS, affirmed. Examined by Mr. BECK:

I am foreign entrance and clearance clerk in the custom house. The papers that come to me when a vessel enters are her manifest and foreign bill of health. When she clears her foreign manifest is filed with me. The "Laurada" reached Philadelphia on July 28th, 1896. Her manifest for clearance was presented the next day, July 29th, and application for clearance to Port Antonio was made by the broker, Mr. Vandiver, or his young man, Mr. John DeHart. On or before August 3d, Mr. Vandiver came and asked if I could clear the vessel to Port Antonio via Wilmington, Delaware, and I told him I could not, but could clear her direct to Port Antonio or to Wilmington, Delaware. He then said he could clear the vessel for Wilmington. He gave me the clearance papers and bill of

health that had been issued for Port Antonio, and I canceled them, and gave him the clearance to Wilmington, Delaware. Something was said by him about having the bottom of the vessel scraped ,but I do not remember, it did not interest me.

Cross-examined by Mr. LEWIS:

The clearance for Wilmington was perfectly and absolutely regular. It is a port of entry about thirty miles below Philadelphia, in the State of Delaware. They have a custom house there.

JOHN L. VANDIVER, sworn. Examined by Mr. BECK:

I am a custom house broker. I represented the J. D. Hart Company. John D. Hart was a member, and I know him very well. I made the application to clear the "Laurada" in July, 1896. I presume I got the information of what cargo was to be carried on the outward trip from the J. D. Hart Company. I got the information over the telephone, and I believe it was Mr. Hart's voice; it came from his office; only the ordinary instructions. I presume he gave us that memorandum over the telephone, the memorandum of the cargo for the manifest for the clearance to Port Antonio. I think it was the day after she first cleared that I received notice that the Hart Company wanted me to cancel its clearance to Port Antonio and obtain a coast-wise clearance to Wilmington. I got the information from Captain Murphy; he is master of the ship. The application for license to unload the cargo after sunset, on her entrance, was filed by me for the J. D. Hart Company. It was to discharge her cargo after night.

Cross-examined by Mr. LEWIS:

Vessels quite frequently come in to one consignee and are cleared out by another. An application for discharge of bananas or fruit after dark are not unusual. It is made on every fruit vessel, and very often before she is reported; that is to save time and prevent rotting of the fruits. J. Frederick DeHart is a clerk in my employ; he is no relation to the defendant; the application papers that have been produced here were made out and signed by this clerk from my office.

CHARLES CLIPPERTON, sworn. Examined by Mr. BECK:

I am the vice-consul of England at Philadelphia. When a vessel departs from Philadelphia for England or some of the colonies, the master is required to file with me a manifest and receive a bill of health. On July 29th, 1896, Captain Murphy applied for a bill of health for twenty-one men including himself, for the "Laurada," bound from Philadelphia to Port Antonio, Jamaica, and at the same time deposited a manifest which he swore to. I granted the bill of health. If the clearance from Philadelphia to Port Antonio

had been canceled, and the ship cleared to Wilmington, it is the duty of the master to obtain a fresh bill of health from Wilmington. There is no British consul at Wilmington, but we would issue it for the port of Wilmington.

Cross-examination by Mr. LEWIS:

My idea of his violation of his duty as master was that he ought to have come back to me after abandoning the voyage direct from Philadelphia and got a new bill of health from Wilmington to Port Antonio. The fee for a bill of health is ten shillings. He should have got another bill of health from Wilmington to Port Antonio, and paid another ten shillings, but is more than that; I say he should have changed the bill of health.

GEORGE L. TOWNSEND, sworn. Examined by Mr. BECK:

I am collector of customs of Wilmington, district of Delaware. On August 5th the steamship "Laurada" made an entry into that port coastwise from Philadelphia; the application was made to me by Captain Murphy with two other gentlemen, I think one was a Mr. Neely; she was represented to be coming up the creek; this was 3 o'clock in the afternoon of August 5th; we sighted her a short time afterward, from the upper part of the custom house; she was a little below the mouth of the creek, and seemed to be at anchor. They asked to clear the vessel for Port Antonio, I reminded them that they had not entered; that was no doubt an oversight; they had all necessary papers, and entered her at once. They then applied for a clearance, the papers were made out, the deputy went out and made a thorough examination, and then the ship was permitted to go. The "Laurada" got back from Port Antonio on September 10th, 1896; I have her entry. Her cargo was bananas; after entering they were taken off and brought to Philadelphia on lighters.

Q. Did you see any reason for this course, transferring the bananas to lighters, or did you hear any reason.

(Objected to. Objection overruled. Exception noted for defendant.)

By the COURT:

Did you hear from the officers of the vessel any reason stated?

It was represented to me by some officer of the vessel that they were aground; aground at Wilmington, opposite the creek. She remained there; we had her in custody for two or three weeks; she was detained by instructions from Washington.

Cross-examined by Mr. LEWIS:

I was not out on the boat for three or four days; the bananas that were then in the boat were in a very bad condition. The "Laurada"

did not come to Philadelphia; she remained at Wilmington for two or three weeks; she then went down the river and bay; my recollection is that she cleared for Halifax; I am sure that she did not come to Philadelphia. Her papers were perfectly regular. The entrance of a vessel is always first, but very often a man comes to our custom house and enters his vessel and clears her at the same time.

Re-examined by Mr. Beck:

On her return voyage Mr. Jordan appeared and represented the consignee of the cargo. I think he held a power of attorney from the J. D. Hart Company.

PETER B. AYRES, sworn. Examined by Mr. BECK:

I am deputy collector and inspector of customs in the custom house at Wilmington. About 4 o'clock in the afternoon the collector gave me the ship's manifest of the "Laurada," her clearance, bill of health, her crew list and ship's registry, and directed me to go aboard of her and make a thorough examination. I went aboard, going out on the steam tug "Martha," entered the vessel, examined her from stem to stern, and found her just as a vessel of her character would be; she had two boats on the port side and two on the starboard side; I found she had coal in the forward hatch; I asked the captain why the excess of coal, and how much coal there was, and he said between 250 and 300 tons. I mustered the crew, and they answered with the exception of one man; I asked where he was, and they said he had failed to come on board the ship in Philadelphia; they brought forward another man, and I entered him upon their papers; I did not see anything of two seamen, one named Cowley and the other Roberts. There were no other boats than those on the davits. She left about 7 o'clock.

Cross-examined by Mr. LEWIS:

I did not alter the crew list; I simply made an addenda to the list of one name opposite the name of J. Taylor, the man they told me had deserted. If they had asked to have twenty-three seamen at Wilmington instead of twenty-one, I would not have objected, but their names would have gone on the list; I would gladly have added them there.

ALPHEUS M. WALKER, sworn. Examined by Mr. BECK:

I am secretary and treasurer of the Morrisdale Coal Company; I furnished the steamers of the J. D. Hart Company with coal for some years; on July 28th we sent on board the "Perry;" they had their own boats, it is a lighter; 191 tons for the "Laurada;" on August 3d she got 104 tons, and on August 5th she got 74 tons; that is, 369 tons were put on board the "Laurada;" we got the

orders from the J. D. Hart Company; they came over the telephone; we rendered the bill to the steamship "Laurada" and owners; I have called on Mr. Hart about the bill; part of it has been paid by check of the J. D. Hart Company, J. D. Hart, president; Mr. Jordan, the bookkeeper of the J. D. Hart Company, gave the check; I have had several conversations with Mr. Hart with regard to collecting the bill; he has never denied liability for it.

Cross-examined by Mr. LEWIS:

I am not prepared to swear that Mr. Hart said the coal was going to Baracoa or Port Antonio; we did coal some other vessels for Baracoa about the same time; I know that we coaled some other vessels for him at that time; I could not say what they were; we furnished 369 tons in those shipments; we have furnished that much to other vessels for Mr. Hart, yes, 1,500 for some vessels.

HOSEA HORTON, sworn. Examined by Mr. BECK:

I live in Atlantic City; am a yachtsman and fisherman in the summer; last August I was working for Captain Henry C. Fleming; he is running a boat business, hiring sailboats and yawlboats. I know the launch "Richard K. Fox," and believe she is owned by a man named Anderson. I saw a party go out on the "Richard K. Fox" in August last; it was Saturday night, on the 8th of August. I have seen the defendant, John D. Hart, before; the first time I ever saw him was on Saturday afternoon on Fleming's wharf, the 8th of August, last year; John Burcher was with him; I was standing in the boathouse door, and Hart passed by, and he says, "that is just the boat we want;" I don't know what boat he referred to; I did not hear him say anything else at that time; there were two other gentlemen with him besides Burcher; Captain Fleming was one, and the other was a stranger to me; he looked like an American; Hart said, "that is just the boat we want;" he was aboard of the "Fox;" she is a naptha launch. I met Burcher before; he is a boat builder; he has a house down at Atlantic City; he has no business place there. I was sent by Captain Fleming in the evening to go up to Gardiner's ditch and bring the "Fox" around to the wharf; Gardiner's ditch is around the inlet, there are several houses there, boat houses; the "Fox" laid in Gardiner's ditch alongside of a sloop, and there was some men aboard of her; it was about 10 o'clock at night. I went aboard the "Fox," the captain was lying in his berth; I told him that I wanted to move the "Fox" around to the wharf, and Mr. Burcher stepped up to me and said he had chartered the boat for a fishing party; Mr. Hart was not there; Burcher told me to get off the boat, and I got off on the wharf; I stayed there for a few minutes there; I saw some men going aboard of the boat; they came there in 'buses, there was 'buses standing there, three of them; I suppose they came in the

'buses; I should judge there was about 18 men; I did not get a good look at them; I now recognize Mr. Hart who was among those 18 men; Mr. Hart says, "Cast off your lines and get at sea, and you know the rest;" that was said to the men on board the "Fox," I suppose; what Hart said, exactly, was "Cast off your lines and get at sea, and you know the rest;" Hart staid on the wharf; he asked me, he says, "what business have you got to interfere with my business;" I says, "none." There was three other men standing around the wharf, but I don't know who they were; I think they were the drivers of the 'buses. I repeat what he said, "What business have you to interfere with my business;" I says, "None; only Captain Fleming sent me after the boat;" he says, "To hell with Captain Fleming;" he says, "You have got no business to interfere with my business, and you, I will throw you overboard;" he grabbed me by the shoulder, and I got away from him and got on my wheel and went home; I could not tell whether he was joking, for I never saw him but once before; I did not wait to see where he went.

Cross-examined by Mr. LEWIS.

It was in the day when I saw him first; it was 10 o'clock at night when I saw him the second time; Gardiner's ditch is about half a mile from the built-up part of the city; I had never seen Captain Hart before I saw him in the afternoon; I asked Captain Fleming who it was, and he told me; I asked him what big gentleman that was, stout man, and he told me; Captain Hart was not there then, he had gone away. I knew Mr. Burcher about two years; he lives near me in the summer time; he is not a rival with me in my business; he is in the boat business, building boats, and I am in the boat business, fisherman and yachtsman.

Re-examined by Mr. BECK:

Without regard to what Captain Fleming told me, I have no doubt that this defendant, John D. Hart, was the man who on that Saturday afternoon and evening made the remarks to which I have testified.

JAMES R. SMITH, sworn. Examined by Mr. BECK:

I am an agent for tugboats; am agent for the tugboat "Madeira;" have known John D. Hart about a year. On August 5th we received a telephone from the J. D. Hart Company to send a tug to pier 11, North wharves, about 8 o'clock in the morning to take stores off to the "Laurada" and take her to Greenwich; we sent a tug, and I believe she took the stores off and took the steamer to Greenwich; we rendered a bill for that against the steamer "Laurada" and owners, it is not paid yet. It has never been disputed by the J. D. Hart Co. About 4 o'clock in the afternoon I found a memoranda

on my desk, a telephone message, to send a boat to South street to get a couple of men and tow some boats down to the steamer "Laurada" down the river. I accompanied the tugboat; we left about 5 or 6 o'clock, went to South street wharf, and found two young men; I had never seen them before, and have never seen them since; the two young men got on, we went to Kaighn's Point; I think the message said to go to Kaighn's Point, but I do not know who sent the message; we went to Kaighn's Point and found three or four boats—large rowboats; we towed them down the river to the "Laurada;" I went to sleep off Wilmington, and did not wake up till about 4 or 5 o'clock the next morning. I rendered a bill for towing these four boats against the steamer and owners; I sent it to the J. D. Hart Company; I took the bill to the J. D. Hart Company; they tore it up, and said they did not know anything about it; two or three days afterwards a man came in and paid it; I do not know him, and did not ask him who sent him; I think it was Mr. Hart who tore the bill up and said he did not know anything about it. He paid the bill in cash; he did not ask for a receipt.

Cross-examined by Mr. LEWIS:

The message in reference to taking the boats was a message I found on my desk; it was to go to South street, get a couple of men, and then go to Kaighn's Point; Kaighn's Point is in the State of New Jersey; we did not take any boats from Philadelphia; we took them from Kaighn's Point; the defendant was not at Kaighn's Point; he did not give any directions in reference to this matter; when I went asleep we had not reached the "Laurada;" I do not remember what happened after that; I awoke the next morning when we were coming up the river. It is customary when making out bills for services to charge them against the vessel by name; I went personally to the office of the J. D. Hart Company and presented the bill; I do not remember whom I saw, but I think it was Mr. Hart; the bill was torn up, and they said they did not know anything about it.

GEORGE D. KNOX, sworn. Examined by Mr. KANE:

I am captain of the tugboat "Madeira", and Mr. James R. Smith is her agent. On the morning of August 5th I took stores to the steamship "Laurada" from pier 11; she was lying out in the stream; the stores were meat, barrels, some bags of potatoes and ice; the second trip we took a barrel of oil; pier 11 is the pier of the J. D. Hart Company; I do not know who was superintending the placing of provisions on my boat; there were several men putting them on. It was 10 o'clock when we started to store; about 12 o'clock we started the "Laurada" to Greenwich; she went down under her own steam; we put her in at Greenwich and remained there until she took her coal; we took her out of the dock, turned

her head down the river, and we proceeded back up the river to Walnut street; this was about 3 o'clock in the afternoon. We did no more work that day. I received orders from Mr. Smith to go to Dialogue's and get four boats and tow to the "Laurada"; Dialogue's is at Kaighn's Point, Camden, New Jersey; the order said the "Laurada" would be at Wilmington Creek or further down. We stopped at South street on the way down for provisions for the tugboat, at the steward's request to stop there; I did not notice anybody get on board; from there we proceeded over to Dialogue's; I noticed two young men were on the tug about that time; I did not know the two young men and could not recognize them. At Kaighn's Point we took four yawlboats, open boats that would hold ten men each; we took them in tow, and towed them down the river to a point called Dan Baker Shoals, about forty-nine miles down; we got there about 12 o'clock at night, and made fast to the ship; from her general appearance it was the "Laurada"; she was at anchor; she had only the general signal lights up; I gave my mate orders to stay alongside until they took the boats, and then proceed back to Philadelphia; I went to my room and remained until next morning.

Cross-examined by Mr. LEWIS:

It is a usual thing to do, take stores out to a vessel; the stores, as far as I noticed, were such as ice, meat, potatoes and barrels, one barrel of oil; we took the "Laurada" to Greenwich piers for coal; it is a place below the city, near Gloucester; we waited till she received the coal; that is a customary thing. When we got the order to go to Kaighn's Point for the boats, I told the steward we were going away that night, and asked him if he wanted provisions; he said they did, and as we always get our provisions at South street wharf, we stopped there for them; the stores we took on there were for our tugboat only, just the usual stores. I did not see the two young men get on there; we went to Kaighn's Point and got the boats; that is in the State of New Jersey. When we reached the vessel, the steamship, she was at anchor, and had her lights up; there was nothing unusual in the lights, they were proper lights; she was anchored in the Delaware Bay, in the proper channel, between Delaware and New Jersey.

JOHN LAMBERT, sworn. Examined by Mr. BECK:

I was a deck hand on the tugboat "Madeira," and accompanied the "Madeira" on the trip when she took the four yawlboats down the bay; I had charge of the boat when the captain went into his berth; the boats were hoisted aboard of the steamer that we were alongside of; we came to Reedy island; the steamer proceeded down the bay.

Cross-examined by Mr. LEWIS:

I could not tell whether it was the "Laurada" or not; I do not know one steamer from another, hardly, in the night time, because I have no occasion to; I was not in command.

PRATT C. JORDAN, sworn. Examined by Mr. BECK:

I am the bookkeeper of the J. D. Hart Company; the defendant, John D. Hart, is the president. The company has not been in existence two years yet; the supplies that were put on the "Laurada" on her outward trip on August 5th, 1896, were charged to the J. D. Hart Company, as near as I remember; the business of the J. D. Hart Company is the importation of bananas; the company usually has control of a line of steamers for that purpose; in July and August of last year the "Laurada" was one of the steamers in control of the company; the coal that went on board the "Laurada" on that trip in August last, was charged, I judge, to the J. D. Hart Company along with the other supplies. On her return trip the cargo was consigned to A. S. Lassell & Co., and was by Lassell & Co. turned over to the J. D. Hart Company, and because the cargo was ours, it is natural that we would sell the cargo and make payment of the bills necessary. The active manager of the business of the J. D. Hart Company was Mr. Hart as president and manager. I held a general power of attorney from the J. D. Hart Company to sign checks, endorse bills of lading, in fact, to transact all business in Mr. Hart's absence. The power of attorney I used at Wilmington was a special one, because Mr. Townsend, the collector of the port, requested it, so that it might be left with him to show the power to deliver and receive the cargo. It is not an unusual thing to transfer a ship.

Q. I did not ask whether it was anything unusual. I asked whether in your experience, as the attorney in fact and bookkeeper of the J. D. Hart Company, it had ever entered one of its ships at Wilmington and then transferred its cargo by lighters from Wilmington to Philadelphia?

(Objected to. Objection overruled. Exception noted for defendant.)

A. No, sir. It is nothing unusual for us to divert ships; that is all I can say. I do not know of any reason. I do not remember that I heard from Mr. Hart. Mr. Hart asked me to go down to Wilmington and enter the ship at that port; the crew were paid in the first instance by the United States Shipping Commissioner, but the wages were ultimately paid by the J. D. Hart Company.

Cross-examined by Mr. LEWIS:

I remember now that the lighterage expenses and all bills of this cargo of bananas were paid by William Weinert; they were not

paid by the J. D. Hart Company at all. I remember now, I did not think of it before, they paid some other bills on that cargo, but I could not tell you just what they were.

Re-examined by Mr. BECK:

William Weinert & Co. are commission merchants; they are the auctioneers who sold the bananas for the J. D. Hart Company; the auctioneers who got to the expenses and gave the balance of the proceeds to the J. D. Hart Company.

By Mr. LEWIS:

William C. Neely was in the employ of the Hart Company last August; he discharges the ships; Mr. Hart never has anything to do with that; the J. D. Hart Company is an incorporated company under the laws of the State of New Jersey.

GEORGE H. WALLACE, sworn. Examined by Mr. BECK.

I am a pilot for the bay and river Delaware, and piloted the "Laurada" out on August 5th, 1896. I boarded her in the stream here, in Philadelphia, lying in the stream, between 11 and 12 o'clock; she left a little after 12 o'clock and proceeded to Greenwich pier, and left Greenwich pier at 3 o'clock. I did not take charge of the ship until I got to Wilmington; I was not considered as a pilot until the ship got to Wilmington; the captain of the vessel gave me directions; I had no conversation with Mr. Hart about it; I was to pilot the "Laurada" to sea, and I knew before I left Philadelphia that I was to do so; I left the "Laurada" about five miles from Cape Henlopen. I knew she had taken the coastwise clearance to Wilmington; the reason I did not board her at Wilmington is if I had gone to Wilmington I did not know how I would get aboard the vessel, so I went down as a passenger to get aboard easily; I knew she was going to stop at Wilmington to get her clearance papers out and to get the captain; the captain did not go with the "Laurada" from Philadelphia to Wilmington; he boarded her at Wilmington creek; they anchored in the stream, and remained possibly an hour and a half.

Cross-examined by Mr. LEWIS:

It is not unusual for masters of vessels to come aboard when the vessel is at Wilmington or even further down; I have known them to board the vessel at the breakwater, at Marcus Hook, or at any point along the river; they save time by taking the train while the vessel is going down by tugboat or by steam.

WILLIAM C. NEELY, sworn. Examined by Mr. BECK:

I am in the banana business. I had an agreement with Mr. Hart for two years, which expired last March. I remember going

down to Wilmington on the morning of August 5th, 1896; I went at the request of the captain, Murphy, who was an entire stranger down there; Mr. Hart did not ask me to go down to Wilmington; we called at the collector's office; I introduced Captain Murphy to the custom house broker; I should judge it was about 2 o'clock in the afternoon; I could not say I heard what Captain Murphy asked; I introduced him to the custom house broker and the captain and he then talked; I went out to the vessel, just to see Captain Murphy off.

Cross-examined by Mr. LEWIS:

I had an agreement with Mr. Hart for two years which expired on the 18th of March, 1896; I was in business at the time, and have been in business for three years; I work on the Quaker City Fruit Company's vessels.

JAMES ANDERSON, sworn. Examined by Mr. BECK:

In August, 1896, I lived on board the "Richard K. Fox;" she is a naphtha launch; I am captain and owner of her; she is 38 feet long, 10 feet beam, and 5 feet depth of hold; we have carried 75 passengers in her. In August, 1896, she was at Gardiner's bay in Atlantic City; John Burcher chartered her for a fishing party to go down to Barnegat; we left half past ten Friday evening; that was on Friday night, I am certain of that; it was on Friday forenoon John Burcher made the arrangement with me; I do not know the date or the month; the next day was Saturday; we returned to Atlantic City ten o'clock Sunday morning. The men reached the wharf where the "Richard K. Fox" was lying somewhere between 9 and 10 o'clock; I was down in the cabin of the boat; I counted eighteen; we went out of the bar and down to Barnegat; I did not ask any questions, I was attending to the engine; the boat was out all night; I was struck on the hip by a man I had discharged, and that night I was feeling very badly; the next morning some of the men commenced sounding to see how deep the water was; I heard one of them say, "there comes the steamer;" I saw a steamer but did not take notice of her name; I took five of the men back again; the other thirteen must have got on the steamer. John Burcher paid me; he gave me cash; I do not know who steered the "Fox;" I was at the engine attending to that; the point where our launch came to this steamer was right abreast of Barnegat.

Cross-examined by Mr. LEWIS:

It was out in the ocean, about four miles. I did not see this man there (indicating John D. Hart). I do not remember seeing him until I saw him in court.

NICHOLAS J. SOOY, sworn. Examined by Mr. BECK:

I live in Atlantic City and am a yachtsman. I know the defendant, John D. Hart, and knew him by sight before August 5th, 1896. I first saw him August 8th, Saturday; I saw him at the inlet pavilion; he came down there and hired me to make a trip; Mr. Everett Mehrer was present; he has charge of the inlet; Mehrer was with Mr. Hart; Mr. Mehrer called me there to them both; he says, "here is a good man to make a trip to Barnegat;" what he said was, "here is a good man to go to Barnegat." Mr. Hart said, "can you recommend this man?" Mr. Mehrer said, "yes; I can." Mr. Hart said, "what, do you want to make the trip?" He said the trip was to be to Barnegat bell buoy, and there would be a steamer there waiting for us. He said he wanted me to take the boat up there as pilot, I suppose. I asked him what kind of a boat he had; I told him I had a boat. He said, "I have got one; that is all right about the boat." He said, "you meet me at half-past six at Kuehnle's Hotel." I asked him $15 to make the trip up there that night, so I could get back next morning; if not, I wanted more. He said, "That is all right; you will get paid for it; if you ain't back, you will get paid for your time." He said, "get paid, and get paid well," he said, "if I would keep my mouth shut." He said he could pay me as well as anybody; I need not worry about the money. I went to Kuehnle's corner at half-past six; Hart was there alone; I walked up to him and met him. He said, "stay here; I will be back presently." I sat there until he returned. We sat there awhile and walked around up to the depot two or three times, backward and forward; he saw some men there and went and spoke to them. I went up to the depot directly after Mr. Hart. These men arrived in a train; I think there were four of us together; there were four of us together at first; we were afterwards joined by others. I could not tell how they came, but we all met at the Pennsylvania depot; I should judge there were eighteen or more. I do not think they were Americans; they looked very dark for Americans. I could not say I know Colonel Nunez, only hearing his name. We waited there awhile, and I joined a party in the 'buses; I think it was three 'buses. Mr. Hart loaded up the 'bus I was in. He told this other man I would take charge; to take charge of the vessel and go where I was to go. At that time I knew that the name of the steam launch was the "Richard K. Fox;" I think Mr. Hart told me. (Christopher Rodman requested to stand up). That is the man to whom Hart said that I had charge of the vessel to take her to Barnegat bell buoy. Hart gave directions to the driver of the bus to go to the Knickerbocker drawbridge, the Knickerbocker ice wharf; that is two miles and a half from Gardiner's ditch; when we got there somebody told us that the boat was not there and we had to go to Gardiner's Creek; I think it was Mr.

Nunez that the man at the Knickerbocker wharf said the boat was down at Gardiner's ditch; Gardiner's ditch and the Knickerbocker wharf are at two opposite ends of Atlantic City; the three 'buses went down to Gardiner's ditch; it was half past nine when we reached there Saturday night; the Fox was lying along side of a sloop yacht that was there; the men got out and went aboard the Fox; Mr. Hart was on the wharf after we came down there, but he was along behind us; John Burcher was there; Anderson was there; he is not correct in saying it was Friday nght; it was Saturday night, the 8th of August; Hart never said anything to me before the Fox left; he said "It is time you are going; you have been loafing around here long enough." I saw Horsey on the wharf that night; Mr. Hart was talking very roughly to him I thought; Hart said he would throw him overboard; I knew Horsey before that. Our boat started and was out all night; we found the buoy just between daylight and sun rise, and had a map to go on an east course to find a steam yacht; the map was lying right there for me and Mr. Rodman to look at; Mr. Rodman told me where to go; it is traced on the map; a steam yacht is what I started out to meet; we met the "Laurada," and went alongside of her, and it was quite a while before my party got out. Another tugboat came, towing a lighter. Before the tugboat came, the men on the "Laurada" gave us something to eat. I went on board, and Mr. Rodman. She was simply drifting around. Rodman spoke to the mate and said, "I am glad to see you;" some expression like that. On the lighter was some small boxes and some stuff there done up with bagging. I could not tell who transferred the cargo from the lighter to the "Laurada;" the crew of the "Laurada" and the lighter unloaded the boxes; some of the men on the Fox got in and helped; I do not believe they were over an hour and a half or two hours in unloading the boxes; we lay there until about half past three or four o'clock; the "Laurada" went off shore further; the Fox went in towards land as soon as she could make it; we took back five men all told—the two Burcher boys, the man they called Nunez, Rodman, and Mr. Anderson; the others went on board the "Laurada;" that is the last I saw of them. We did not take all five to one place when we brought them back; first we went to Barnegat, and three of them—the gentleman they called Mr. Nunez, and Mr. Burcher and his brother got off there; Anderson and Rodman got off at Atlantic City.

Cross-examined by Mr. LEWIS:

The first time I met Mr. Hart so as to know his name was when Mr. Mehrer pointed me out and brought us together. Mr. Hart asked me what I would go for, and I said fifteen dollars, and if it would take any longer than the morning I could not go for that, because I am looking for my party down here; I am sailing a private

yacht and I will have to take them out. I was sent for to come and be a witness here to-day; a man came down and brought me up here, by the name of Brown, I believe; I do not know who he was; he paid my railroad fare up. I never asked for any money from any person in this case in reference to testifying; I never received any, and was never promised any, not that I know of; I do not remember it if I have been. Mr. Burcher paid the fifteen dollars that Mr. Hart agreed to pay me for going out "Fox." I asked him for $25, and he gave me $20; I thought I had earned it, we went Saturday night about 10 o'clock and did not come back till Monday, between 12 and 2 o'clock; I told him that if he could not afford to pay any more that it would have to do. I knew Dr. Goldberg; I do not know Ray Edelman. (Dr. Goldberg and Ray Edelman asked to stand up for identification.) I have seen that gentleman (Dr. Goldberg) before. I always called him Doc. I did not see these gentlemen together that I know of; I do not know the other gentleman at all; I did not talk to them together about this case; I did not ask them for money, or either of them; I did not say to Dr. Goldberg that if he would give me $25 I would testify any way that John Hart wanted me to; I did not say anything like that that I know of.

JOHN BURCHER, sworn. Examined by Mr. BECK:

My business is most anything, I do not carry on boat building; my father and brothers are engaged in building and selling boats, partly some times; I did not sell four yawlboats about the 1st day of August; I do not believe I sold four boats any time last summer; I sold boats off and on one week and the next week, something like that; I did not ever sell four boats to any one person at different times; the four boats that were put on the "Laurada" were not our boats that I know of; we always kept about 15 boats on hand; there are two or three boats there at Dialogue's now, I do not think there were some of them there about the summer of 1896.

MICHAEL J. MCKILLUP, sworn. Examined by Mr. BECK:

I live at Greenpoint, Brooklyn, and am captain of the tugboat "Dolphin." In the first week of August, 1896, I believe we did tow a barge down the New York bay to Barnegat; I think it was on Saturday, I believe the 8th or 9th; one of the boys in the office gave the order to go to Pier 39, East river, to take the barge from there. I went up to Pier 38 with the boat, and started from there about 9 o'clock in the evening; I do not know what was in the barge, some kind of stuff covered up, some kind of cargo; a pilot was there that gave the directions to take charge of the barge and the boat; I do not know the pilot, never saw him before and have not seen him since. I turned the ship over to the pilot; I staid on

watch until we went down the bay, then I saw he was all right, he had charge of the boat, and I turned in. When I woke we were away down along the Highlands; I believe we went as far as Barnegat; we met a ship, I think it was the "Laurada;" there was a launch there; the cargo that was on the lighter was put aboard the ship by a lot of men; I do not know who the men were; there were no men on the "Richard K. Fox" when I got there; four men came down with me on the lighter or tugboat "Dolphin;" one of them was an American; it was dark when they came on board; I did not take notice of them. I think it took a couple or three hours to unload the cargo on the "Laurada; I did not count the men engaged at that work; it was a little foggy; the "Laurada" was standing still as we came up; there were signals exchanged; we took five men down to the "Laurada," two staid on her and three came back with us.

Cross-examined by Mr. LEWIS:

I believe it was about ten miles off the coast where we met the "Laurada."

DENNIS MCKEEGAN, sworn. Examined by Mr. BECK:

I live in Brooklyn, and am mate of the "Dolphin." I was on the voyage down from New York; it was Saturday night in the summer of 1896; cannot say what month. I did not know we were to haul the barge; the captain gets all orders. I saw some men on the "Dolphin," but did not see them coming on the boat, and cannot say whether they all came back to it. I heard them say off Barnegat. I saw a steamer there. I heard them say it was the "Laurada;" the cargo that was on board the lighter was put on board the ship. I saw a crowd of men on the lighter engaged in transferring the cargo.

Cross-examined by Mr. LEWIS:

I cannot say how many men I saw on the lighter. We were away from her about a quarter or half mile. We made the lighter fast to the steamer, and we drifted away. When we backed away about a quarter of a mile we saw the "Fox" coming around the stern of the steamer. I do not know what her name was. I only heard them calling her the "Fox" here in court.

JAMES MCALLISTER, sworn. Examined by Mr. BECK:

I live in Brooklyn, and am a member of the Greenpoint Lighterage Company that operates the tugboat "Dolphin." We received directions to take this tugboat and the lighter down to Barnegat in August, 1896. We only rented the "Dolphin" and the lighter for that occasion; the arrangement was made with us by a gentleman named Cash. He gave me that name. I first met him in my office

either Friday or Saturday, I am not sure which, in August. I saw him once before. He gave me the same name then, and had come on the same errand before; it was not to take a lighter to the "Laurada" on the previous trip; it was to put some stores and cargo on board another ship. I have seen him since in court in New York, but did not ascertain his real name. I do not know whether he is here to-day or not; nobody was with him; he did not say from whom he came; he did not pay me at the time, but paid me on Monday or Tuesday following in bills. I do not remember giving him a receipt; he did not accompany the excursion; he said he would come and pay my bill. I did not know whether he was a responsible man; we must take chances. I met him on one occasion before, and he paid his bill, and I had no reason to doubt him. He looked like a foreigner, though he spoke good English. The cargo on the lighter consisted of boxes. I introduced the pilot to the captain. Mr. Cash furnished us with the pilot. I did not ask the pilot his name. I went down along with them. I saw that pilot before. I saw him on the previous occasion of our hiring by Mr. Cash. We met the steamer on Sunday, I think about 12 o'clock. I did not look at her name. Cash told me it was simple stores and some cargo to a vessel, and he would furnish me a pilot. He did not say what vessel it was. Those that went on the "Dolphin" besides her crew were the pilot, two other gentlemen and myself. I do not know the other two gentlemen; they spoke good English; we all four came back.

Cross-examined by Mr. LEWIS:

There were only four of us, including the pilot, besides the crew of the "Dolphin" and the people on the barge. Those people all returned in the Dolphin. I endeavored to get all the men I could from the mate of the ship to help unload the lighter as quick as possible; there were four or five besides our own men.

WILLIAM J. BRUFF, sworn. Examined by Mr. BECK:

My business is selling arms and ammunition at 315 Broadway, New York. About the 5th day of August, 1896, I sold arms and ammunition to Mr. Eston; I know him as a commission man in New York; they were to be delivered at Pier 39, East river, and were delivered on August 8th. The items were 2,100 Remington rifles, 250 Remington carbines, a short rifle, 250 Mauser rifles, a repeating rifle, 250 carbine slings, 700,000 cartridges 43 caliber, 50,000 cartridges 44 caliber, 95,000 cartridges 7 millemeter caliber, 10,000 cartridges 7.65 millemeter caliber, and two Hotchkiss cannon, 12 pounds, 500 rounds of cartridges for the cannon, 3,000 cartridges 44 caliber, 10 pack saddles and harness for the cannon; 12 revolvers, 12 holsters and belts, five pounds of glycerine, 200 burlap bags, 50 pounds of vaseline, 6 shovels, 3 pick axes, and 20 bundles

the contents of which I do not know. No dynamite was included in that sale; they were ordered at different periods just prior to that, within a week or ten days; they were not all ordered at once, but were all delivered at once. I had dealings with Mr. Eston prior to this; nobody was with Mr. Eston at the time he ordered any of these portions. The price of these arms and ammunition was about $50,000; it was paid in cash; a bill was rendered to Mr. Eston, and he paid it in cash; there were two payments I believe; no reason was assigned for his payment of such a large sum of money in cash; I believe we gave him a receipt. This stuff was delivered in different forms for shipment—boxes and bundles. The 200 burlap bags were empty bags. I do not know whom Mr. Eston represented in this purchase.

Cross-examined by Mr. LEWIS:

The arms were wrapped in burlap—the rifles and carbines; the packages were numbered; they were not otherwise marked; they did not have a shipper's mark on them. We purchased the cannon from the American Ordnance Company; we bought them packed. I did not know Mr. Hart in this matter.

GEORGE W. COWLEY, sworn. Examined by Mr. KANE:

I live at 1336 Bainbridge street, Philadelphia, and am an American citizen; am a seaman; shipped on the "Laurada" August 5th. I worked on the "Bermuda" one day; the second day the chief officer came to me, and in pursuance of what he told me I went on the wharf to Mr. Hart, on Mr. Hart's wharf; it was in the morning; Mr. Hart asked me how long it would take me to get my clothes; I told him about an hour or an hour and a half; he spoke to the chief officer, and gave him a two-dollar bill, and told him to pay me for the time I had been working there; the chief officer took me out on the street and paid me one day's pay, and told me to hurry back with my clothes; I know the chief officer; it is that gentleman there (indicating James H. Rand); he was chief officer of the "Bermuda." When I came back the tugboat was lying alongside of the wharf taking stores aboard; this was, I reckon, between 9 and 10 o'clock in the morning, on a Wednesday, the 5th day of August; Mr. Hart was still on the wharf when I came back; I then went out to the "Laurada," she was lying in the stream; I went out on the towboat; the provisions that were taken out were ice, meat, canned goods, barrels of potatoes. I remember what Mr. Hart said to me; he asked me where were my things, and I told him they were there in a push cart, and he said: "go then aboard that boat," and I did; it was the tugboat, and I went out on her to the "Laurada." The "Laurada" weighed anchor about an hour after we got there, and steamed down the river to Greenwich pier; a tug came along and docked

her; she took on some coal; she left Greenwich pier about one o'clock and steamed on down the river to abreast of Wilmington and came to an anchor; a towboat came off with Captain Murphy and made fast alongside. Captain Rand came forward and told me to stow away, because I was not on the articles; he was the chief officer of the "Laurada." I did stow away for I reckon about half an hour, getting out of sight of every person. I was not at the time one of the ship's crew; about half an hour afterwards I came out; the vessel was getting ready to break anchor; the towboat had left us; then we steamed on down the river. I went below at 8 o'clock. I was called again at about quarter past 12; there was a towboat lying alongside containing four yawlboats, four surf boats; they were taken on board and stowed in the hold, the end of them stuck up outside of the hatchway, two forward and two aft. I think the "Laurada" had four life boats on her davits; the four surf boats were stored in the hold; they were bigger than ordinary life boats; the ends stuck up out of the hatchways, and the ends were covered over with canvas. We steamed down the river; next morning we put the pilot off and steamed out to sea; we steamed on till Sunday morning; then we sighted a steam launch; it was about 8 o'clock in the morning, I think; between Thursday and Sunday morning we had been steaming out in the high sea. I was below when the launch was met; the watch was on deck and called me, and I came up on deck and saw this launch. I did not know where we were; the launch was steaming towards us; it was the "Richard K. Fox." I recognized on her the chief officer of the "Bermuda," Mr. Rodman; when she came alongside the men on board the launch said they were hungry; the mess-room boy and steward, I believe, supplied them with grub. I didn't say "I believed." I said they supplied them with grub; the chief officer of the "Bermuda" asked the captain if he had seen the other boat—that is, Mr. Rodman asked our captain, Captain Murphy, if he had sighted the other boat; Captain Murphy replied that he had not. The next I heard some one say "there is a boat coming up at our stern;" everybody turned around to look, and saw the towboat towing a barge; the name of the towboat was the "Dolphin" and the name of the barge is the "Greenpoint;" they came alongside; we were drifting then, the "Fox" had steamed off, she got the food and steamed off. I went below and commenced stowing the stuff from the lighter; the stuff consisted of packages, large, big cases, some sacks sewed up. I worked on board the steamer, the crew was working on board of the steamer, and, I believe, two of them were working on the lighter; some of the men in the launch were working on the lighter. I reckon it was about 3 o'clock when the work was finished; it began, I reckon, about 9 o'clock in the morning. The men in the launch finally came on board the "Laurada;" the launch steamed away from us at 3 o'clock in the afternoon; the

towboat and lighter steamed away from us; some of the men came off the towboat and the lighter. I think there were three or four. I can't say positively how many, but I know there were some came off her on the "Laurada;" one of them was called General Roloff, and he remained on the "Laurada" afterwards. I never heard the name of the other called, except that he was General Roloff's valet. At the time the "Fox" came up alongside of us, I saw General Nunez; he was on board the "Fox." I think he is sometimes called Colonel Nunez; he went back with the boat. When the launch and the two other boats left the "Laurada," we steamed off. I could not see land. I think that there were about 20 or 24 men came off the "Fox;" they did not seem to be Americans; they did not speak the American language, and did not look like Americans; they looked like foreigners to me; they spoke a foreign language. There were three of them who spoke English, and they said they wanted to stow away; this was on our voyage out; it was on a Wednesday; they came to me one night when I was on watch and asked me if I knew anywhere I could stow them away, and I said I did not know; they did stow away finally; I fed them while they were stowed away; gave them water; three of them; I did not know their names. General Roloff remained on board with us; there was a pilot; I have seen him out in Cuba piloting vessels; the cargo was stored in the hold, it was opened after it was put in the hold, and taken out of those large cases; I seen these large cases opened, and these small packing boxes taken out of them, and stowed up on the wing of the vessel on each side, close by the pole; small packages; wooden boxes were taken out of those large cases, and I believe about every case contained from five to six of them smaller boxes with rope handles on them; the smaller boxes contained cartridges, those I seen opened; in handling one of those large cases it broke, and there was a cannon in it; it was of a triangular fashion; it broke open by handling it, and I saw the cannon there. The work of sorting or taking those out of the big boxes was by a man called Capitan, but what his name was I don't know; he was bossing down in the hold; I am not talking about the captain of the vessel; he was one of the men that came off the "Fox;" he didn't speak the American language; he couldn't speak it; he spoke a foreign language to those three men that did speak English; I would see him point to them to put a box here and this one over there and that one over there; that is how I saw him give orders; they stowed them on each side of the pole, on both sides of the vessel; the crew of the "Laurada" did not do any part of that; the work was done by the men that came off the "Fox;" they had some canvas there, and they cut that up and made little small sacks out of it—a little bag that came around your shoulders and came around like that—with a strap to it; they were doing it every day; the crew helped them in that, all that; I helped to sew some of

them myself, doing it by my own will; I was not ordered to do so; I didn't see anything go in those sacks, and didn't know what the sacks were for. The pilot spoke English; I used to run along with him, joking him every day, sitting down sewing sacks when my watch was below and I didn't feel like sleeping; I remember something he said with reference to what they were going to do and where they were going; we sighted a couple of fruit steamers on our voyage out, and I told him, "there comes a man-of-war;" he said he didn't care for a man-of-war, and I said, "they'll kill you;" he said, "no, sir, we kill them;" that is the words he said to me; he said they were going to Cuba to fight—to fight the Spaniards; I had seen him before at the time I was working at Navassa island; he came off out there with a small sloop; he is said to be a Cuban pilot. I was painting the captain's floor one morning in the cabin; these three men that spoke English, and this man called Capitan, came in there and asked Captain Murphy for the chart; this man they called Capitan had a pencil marking out on the chart, and one of these men that spoke English spoke to Captain Murphy, and said, "that's where we want to land at in Cuba;" General Roloff was sitting there at the time; I saw General Roloff and the Capitan together; I saw the Capitan have a paper in his hand and carrying it back and forward to the General; the General was aft in his cabin; the Capitan brought the paper back to the hold, and made them open a box, and it was marked on this box, "12-pound cartridges;" this box was opened; it contained nine cartridges, if I don't make a mistake; they were shells about that long (indicating), cartridges for cannon; the Capitan had taken one of them and carried it aft with this piece of paper in his hand, to the General; they had an inspection there, and the Capitan brought it back and put it in the box and fastened the box up again.

The night the three men came forward and asked me to stow them away, they said they didn't know they were going to Cuba to fight, that they came off on a fishing excursion, and they asked me to stow them away, and I said I had no place to stow them; they asked me to stow them away because they didn't want to go to Cuba to fight; yes, sir; I didn't stow them away, but I found them stowed away in the bottom of the chain locker. We first saw Navassa island on a Wednesday, if I don't make any mistake; I think it was nine days after we left Barnegat, nine or ten days; that was not the first land we sighted; we sighted land one night about 12 o'clock, and steamed off from it; I don't know what that land was. When we first saw Navassa island we steamed away from it, and came back to it on a Friday morning, between 8 and 9 o'clock in the morning; I knew it was Navassa because I had worked there a little before the strike came off; I was working there eighteen months; I think it is twelve miles in diameter. On Friday morning, the second time we sighted the island, we sighted a

towboat lying to an anchor under the lee of the shore; it was the towboat "Dauntless"; I saw her name on her axe-handle, on her bucket, and her aft boats; her name on her bow was covered over with canvas, and the name and place that she hailed from, on the stern, was painted black with black canvas; I was standing on the deck of the "Laurada," and she was lying alongside; I saw her before in Jacksonville. When we first sighted the towboat we steamed up under the land and commenced drifting, the towboat broke her anchor and came alongside, both blew whistles to one another, and the two vessels came together; on the "Dauntless," I recognized the cook, the one called the steward of her, a man called Garbet, big dark fellow; I recognized General Nunez, he was on the "Dauntless;" he was the same Colonel Nunez that I had seen on board the "Richard K. Fox."

When we first came together the captain on board of the towboat asked our captain if he had seen the other boat, and our captain said he had not seen her, and this was the first he had seen; I heard them say on the boat as to the name of the other boat that it was the "Three Friends;" the "Three Friends" didn't get there; I never had any talk with the crew of the "Dauntless." When the boats came together they commenced to discharge the stuff, the boxes and packages on to the "Dauntless;" a portion of it was discharged. The men who were not Americans were discharging the stuff, they were working on the packages; the crew of the "Laurada" did not help at that time; that was on Friday morning; the work of discharging began right away and lasted until about half-past-two o'clock; this man they called Capitan was giving orders; Colonel Nunez and General Roloff were standing aft talking at the time all this work was going on, sitting there part of the time. We discharged coal, took coal out of the "Laurada" and put it on the "Dauntless;" I know they filled her bunkers up. The towboat drifted off from us and anchored that night, and Saturday morning she came alongside and took these men off; they had taken the yawlboats out of the hold and launched them; Saturday morning the towboat had taken these men with these two yawlboats that we had launched; it was too rough for her to come alongside to take these men off, and we took those boats and carried those men to her; she took one of the boats and goes away with it; the other one we moored at our stern. I do not know how far Cuba is from Navassa; it can be seen by being on Navassa island. The "Dauntless" steamed off towards Cuba; the "Laurada" steamed off to sea; she did that under direction of General Roloff; I heard him tell Captain Murphy that he had better steam off to sea. We left on a Saturday and returned to Navassa on a Sunday, between 10 and 11 o'clock; we drifted around there for a considerable time; finally the chief officer and two quartermasters and two of the men that were left aboard there went

ashore to Navassa island; they remained about an hour, and when they came back they brought a goat and chickens and the Governor. Betwixt 1 and 2 o'clock we sighted the "Dauntless" coming back; she came alongside, and it was too rough for her to lay there, and the captain of the "Dauntless" asked our captain would he take and steam around under the shore and put to anchor where it was smooth, so he could come alongside. When the "Dauntless" came back she had on board this man they called Capitan, General Nunez, several other of the men that they carried away, and the man I have spoken of as the pilot; I could not say if the "Dauntless" had any other pilot; I had a talk with the pilot; he brought back a bunch of beach grapes with him and gave them to me; I asked him how did he make out; he said he was two hours and a half landing the stuff; he said he landed it in Cuba.

Then they came alongside and were anchored, and General Nunez he came to me, he did, and asked me would I get the men together and discharge this stuff on board of her; they had not taken all the cargo off at the first trip; they had only taken part of it; I asked the men, and the men were willing to work if they were paid for it; he come and told us he would give us two dollars apiece; we did the work; General Roloff paid it. There was a reason given for the crew of the "Laurada" unloading the rest of this stuff instead of the men that had come on board; the reason was because we hadn't signed to work no cargo; that was our excuse that we were dwelling upon; the reason given by Colonel Nunez was, he said his men were broken down. General Nunez came to me and asked me if I would find the three men who were stowed away—he would give me a dollar apiece for those three men; I told him, "to hell with him and his men, too;" the men were brought out by the second mate; I didn't tell on them; I don't know if any money was paid for them. After we got through discharging this stuff he paid us for that, and then Captain Murphy wanted us to discharge the coal that night, and the crew kicked and wouldn't do it, so he came forward, he did, and told us that General Roloff said he would give us a dollar apiece if we would come and put this coal on board of her; we done so, and he paid us a dollar apiece; General Roloff paid me all that money, and I paid it to the men, there were three dollars all together, two dollars for discharging the cargo and one dollar for discharging coal.

(Mr. BECK requests Mr. Butler to stand up, and asks, did you see Butler there?) Yes, sir, I recognize him; he was steward on board the "Dauntless;" I don't know now what is the home port of the "Dauntless;" I had seen her before in Jacksonville. After the "Dauntless" had loaded up the second time with coal and cargo it went off again in the direction of Cuba, and I did not see her again; it was at night when she left us, and we could see the lights going from us; when she went off, all the men that had come on

board from either the lighter or the naphtha launch "Richard K. Fox," were all gone, so that nothing but the original crew of the "Laurada" was left, and there was not any portion of her cargo left. The "Laurada" then went to Port Antonio. I stayed there.

Cross-examined by Mr. LEWIS:

My name is Cowley; I generally call it Cooley; I have hailed from Washington ever since I have been going to sea; I was born in Detroit, Michigan; when I moved from Detroit I was brought from there to Washington as an infant in my mother's arms; I stayed there about two or three years, and went to Richmond, Virginia; I left there when I was seven years old, ran away from my father, and returned when I was 18 years old; when I ran away I went to North Carolina; the time I raised the riot in Richmond during the election, then I ran away and went to sea. When I stowed away at Wilmington, on the "Laurada," it was in the chain locker; that was the same place that the three men stowed away in during the voyage; Mr. Rand told us to stow away and not let those men see us; he did not give me any reason, and I did not stop to ask him for any; I did not ask to be put on the ship's articles, but went into the chain locker; the other man, named Roberts, he stowed away some other place, but where, I don't know; we did not stow away on that vessel before she left Philadelphia; I did not insist on signing the ship's articles, because I was told I would be put on the articles when she got to sea; there was not any reason given to me as to why I was not put on the articles at Wilmington or at Philadelphia; I knew I was not on the articles; I asked the chief officer that took me to Mr. Hart "Was I going to sign," and he said I would sign on board the vessel; I staid down in that chain locker about half an hour or more; Simpson, one of the crew, told me to come out. When the boat was sighted, on Sunday morning, I was called to see it; Simpson, one of the crew, called me; he was the same man that called me to come out of the chain locker; when he called me I was sleeping in the forecastle, and came right up; it was not his watch on deck; it was his watch below; I did remain on deck from that time until we steamed to sea. There were some people who came on the tugboat "Dolphin" or on the lighter, who did not return on the "Dolphin;" I could not say whether there were three or four, but I know there were about that number; General Roloff and his valet I know came on the "Dolphin." After the cargo was taken on board and we were on our way to Navassa, I saw one of the boxes opened; I saw one of those boxes with rope-handles opened, and I seen one of those other large boxes where they had these shells in, opened.

Q. How many boxes in all were opened during the entire voyage, that you saw?

A. Two I seen.

Q. Did you hear of any boxes being opened that you did not see?

A. No, sir. One broke open; that broke open by my handling it; these boxes that I saw opened were closed up again; they were screwed up; one of those was screwed up and the other was nailed up. I did not see any boxes of dynamite. I do not understand Cuban; the conversation that I had in reference to what the people on the "Laurada" were going to do were had with the three people that spoke English; they were the three men that stowed away; they are the three men that came with the captain and had a chart on the table, and one of them said, "There is the place where we want to land in Cuba;" that was before we reached Navassa, and the first night we sighted land they stowed away; I saw them working on board the "Dauntless" after they went aboard of her. I left the "Laurada" at Jamaica; I staid there two or three weeks; the consul sent me here; I came in a fruiter; a man met me here when the steamer landed; I do not know his name; he took me up to 5th and Chestnut. The first fight I had in Richmond, Virginia, I was only 18 years old; the last fight I had there was in 1890; those were the only two I was ever arrested for; I served thirty days in jail for beating a policeman on Christmas day, the last fight; I did not serve any time for larceny; I did not serve time in the Petersburg jail. I am getting $15 a week to stay here while I am ashore; I got $18 a month as a sailor. I did not say that if Mr. Hart was convicted here I would get $15 a week for the rest of my life; I did not tell that to Briscoe or to anybody else, and did not say anything like that; I did not tell Bland that I had served six months in the Petersburg jail for larceny. I live at 1336 Bainbridge street; there were two men living there that got ten years each for highway robbery; they were living there, but they were no friends of mine. I was in jail twice in my life; I said three or four times; I am not certain how many.

Re-examined by Mr. BECK:

The men that came back on the "Dauntless," after the first trip, did not help on the rest of the cargo; they said they were broken down. With the exception of the troubles I had when a little boy, the only two times I was in prison were in the matter of some breach of the peace and this difficulty with the police officer; those are the only two; I have never been arrested or imprisoned for any thing that affected my honesty.

HUBERT S. HEATH, sworn. Examined by Mr. KANE:

I am a seaman; I heard the steamship "Bermuda" wanted a crew; a shipmate of mine was working down there aboard of her and he told me to come down and see Mr. Hart; I went to the dock where the "Bermuda" was lying, and from there went over to Mr. Hart's dock, and saw Mr. Hart on the dock; I asked him for a

chance, and he took me alongside of the "Laurada," and called the mate, and asked him if he wanted any more men; the mate told him yes, that he wanted two; Mr. Hart said, "come down and pick the men out that you want"; that was on the 29th of July, and I was hired at that time. On August 5th the "Madeira" brought off some stores, and Mr. Rodman, the chief officer of the "Bermuda"; the stores were some stuff in boxes, ice, meat and barrels. We weighed anchor about 12 o'clock, went to Greenwich coal piers, took on some coal and steamed down the river as far as Wilmington, Delaware. We stopped a little while there; a towboat came out of a creek, and four or five men came aboard; they searched the vessel, then mustered the crew aft, and we answered our names, all but two men that were stowed away. They went back and we went down the river. At 12 o'clock in the night I was called, and when I came on deck I saw a towboat alongside, and she had four boats towing astern; the mate told me to go aboard the towboat and swing these boats so they could get them aboard the "Laurada," and I did it; the four boats were put in the hold of the "Laurada." We went down the river and out to sea; we went under slow steam very near all that week until Saturday night, then we stopped. The next morning, a little after breakfast, we saw a launch ahead of us, bearing down towards us; the "Laurada" was drifting around; the launch came alongside, and just before she came alongside the "Laurada" blew three whistles and the launch replied, and they came alongside; Mr. Rodman was on the launch, and Captain Murphy asked him how he made out; Mr. Rodman said he had made out all right, and then asked Captain Murphy if he saw anything of the other boat, and Captain Murphy said no. A little while after we saw a towboat towing something behind. We gave the men on the launch something to eat; it was the launch "Richard K. Fox." Then the "Dolphin" and "Greenpoint" came up; the launch went off a little; then the towboat put the barge alongside and made her fast, and the launch made fast to the stern of the lighter. I could not see any land. I saw Captain O'Brien; he came on the "Dolphin"; he used to be captain of the "Bermuda"; I saw Col. Nunez and Gen. Roloff and his valet; Capt. O'Brien went back on the "Fox" Gen. Roloff went with us on the voyage and Col. Nunez went back. There were large boxes, packages, and some bales of canvas on the lighter; they were all taken aboard the "Laurada"; the men from the "Fox" helped with the work. A little before we finished there was a steamer sighted. I was in the hold, and I heard Capt. Murphy come over the hold and tell the mate to hurry and put these things right down, "put them down anyhow and let us get finished." There were between 20 and 24 men on the launch; there was a man they called him Captain Sutro; he came on the launch; he was directing the transferring of the cargo. After the cargo was transferred the men on

the launch came on board the "Laurada"; the towboat left first, and the launch went afterward, and we went on down south.

On the voyage the large boxes were all broken open, and there were small boxes inside of them with bagging to them and rope handles; these were stowed up in the wings of the vessel, some of these boxes were opened; I saw some small boxes with rope handles opened and cartridges taken out; I saw some rifles; the work of opening and sorting was under the directions of Captain Sutro; on more than one occasion I saw him have a bit of paper in his hand, showing the men where to sort those different things. General Roloff slept aft; I saw Captain Sutro go to him with this paper, and they had a conversation, and then Captain Sutro would go back to the men; the crew did not do any of this work; the bales of canvas that they had they cut up and made small sacks, 12 or 14 inches long, and made with a long strap around to come right under the arm and over the shoulder; they were working at it day after day; they did not work right along. One afternoon I was helping the man they said was a pilot; he was a pilot at Cuba; I was helping him make some of these sacks; I was making fun with him, and told him that a man-of-war would come and kill all hands; he said, no; he said he was going to Cuba and was going to fight against the Spaniards. One night while I was on the lookout, a man came to me and was talking, and said Captain Sutro had come to his house in New York several afternoons and spent the afternoon with him, and persuaded him.

(Objected to.)

Q. You can avoid that portion of the conversation. Leave that out, what he said about how he came to go upon the voyage, but tell us what he said as to the purpose of the voyage.

(Objected to. Objection overruled. Exception noted for defendant.)

A. He said he did not mind going to Cuba to fight for the country; he did not mind being patriotic, but he did not want to go and fight himself.

Q. What was the part about Cuba?

(Objected to. Objection overruled. Objection noted for defendant.)

By the COURT:

Q. State all that he said respecting himself.

A. He said he was going to fight for his country against the Spaniards.

By Mr. BECK:

Q. What was the connection between his remark that he did not

mind being patriotic? Tell us the conversation so we can understand how those two sentences were joined.

(Objected to. Objection overruled. Exception noted for defendant.)

By the COURT:

Q. Whatever he did say, state.

A. That conversation came when he was telling me about how Capt. Sutro acted.

Q. Did he say what he was on the vessel for?

A. Yes, sir.

Q. What did he say?

A. He said he was going to fight for Cuba.

By Mr. KANE:

The "Laurada" finally brought up at Navassa island in the night time; we passed on and did not go in until the next morning; we saw a towboat anchored under the lee of the island, and while we were going there was a signal set on the "Laurada;" some white shirts were set on the starboard aft of the boat davits; the towboat blew a whistle, broke her anchor, and came alongside of us; she was the "Dauntless." I saw her name on the axe-handles and on her boats; a part of the cargo we had was put on board of her, and some coal and some water, and she steamed off from us that night and drifted around until the next morning, and came back and took some of the men aboard, and left us in a northwesterly direction; she took one boat from us, a boat we took on in the Delaware River; on Sunday she came back and took the balance of the cargo, some more coal, and the rest of the men. On the "Dauntless" I saw and recognized Colonel Nunez and Captain O'Brien; I had seen them before, when the "Dolphin" and "Fox" were alongside of us. When I was stowing the cargo in the hold of the "Dauntless," the mate of the "Dauntless" said to us to stow them properly, because he expected to have some fun this time, as they were going around San Diego. I saw the steward of the "Dauntless," and recognized him here in court.

By the COURT:

Q. What became of the other boats that you got down the Delaware?

A. On the second trip the "Dauntless" carried two boats altogether and left two; the following morning we carried the remaining two boats to the island and left them at Navassa.

By Mr. KANE:

We left Navassa Monday night and went to Jamaica the next morning. I left her there. The collector of customs at Port Antonio brought me here. At Port Antonio there were three rifles found

on board the "Laurada" that belonged to the cargo. When at Navassa one of the men that could speak English said they were looking for another steamer called the "Three Friends." He was one of the three who were stowed away. He came on board from the "Fox."

Cross-examined by Mr. LEWIS:

The three rifles that were found were some of the rifles that were opened. I do not know they were stolen or not; one was given to me, but I do not know how he got them; the vessel was searched and they were found in the search by the custom officers of Port Antonio. I did not tell them where to look; one of the seamen, named Norris, had three rifles in his hand; he gave me one. I do not know what he was going to do with them. I hid mine in the chain locker; when I put mine away I saw two more down there; the custom officers found them; he gave me the rifle when we were going into Port Antonio; it was hidden right between the skin of the vessel and the bottom; they searched two or three times for the rifles. When the stuff was transferred to the "Dauntless" it was still in bags and packages. I did not see any rifles distributed; the conversation I had with the pilot was while we were at sea. I was helping him and making fun with him. I said a man-of-war would come and would shoot all of us and drown us and shoot him. He said no, he was not scared; that he was going to Cuba to fight against the Spaniards. I do not know if Cowley was there or not. I know there were several of the crew sitting around. I did not see the cannon. I was paid $2 for the work of transferring the cargo to the "Dauntless" that had been done by the crew; Cowley gave it to me. On the ship I got $20 a month. I have not been to sea since I came here from Jamaica last September; the collector of customs of Port Antonio brought me here. I am getting $15 a week. I did not see any dynamite on board. I saw some boxes marked blasting machines, but did not see them opened. Since the men went off with the "Dauntless" I have seen of some of the men who went off. I saw General Roloff in New York. I saw Colonel Nunez in Jacksonville. I have testified in Jacksonville, New York, Wilmington, and here. I do not know who pays me the $15 a week. I get it from an officer down on Chestnut street, at Pinkerton's Detective Agency. I was born in Barbadoes.

Re-examined by Mr. BECK:

I have been taken from city to city to testify on behalf of the Government; this $15 a week was allowed to me for expenses; it is not paid to me on condition or with the agreement that I shall testify in any particular way.

By Mr. LEWIS:

I pay railroad fare out of the $15. I do not know the fare to Florida. I paid $46 for a return ticket.

TOMAS l'ESTRADA PALMA, sworn. Examined by Mr. BECK:

I am representative in this country in behalf of the provisional Cuban Republic; the insurrection has been in progress in the island of Cuba about two years. I know General Roloff, and I know Colonel Nunez. General Roloff is the secretary of war and holds the title of general in the Cuban army. I do not know what position Colonel Nunez holds in the Cuban army. He was colonel in the other war. I think he holds the same position, but I do not know really. I suppose he has the same rank; I do not know if he has been promoted because of his services. I do not know Captain Sutro.

Cross-examined by Mr. LEWIS:

General Roloff was a major general in the last war that began in 1868 and terminated in 1878; in that war Nunez was a colonel; I think he was made an officer in 1879 or 1880; Cuba has had three insurrections; a man that was known as general or colonel then is known as general or colonel now.

JAMES H. RAND, sworn. Examined by Mr. BECK:

On that voyage I was chief officer—first mate—of the "Laurada;" her captain was Captain Murphy; I have been connected with Mr. Hart for seven years, off and on; I joined the "Laurada" in July, shortly after the fall; I was transferred from the "Bermuda;" Mr. Hart told me the Bermuda would lie up for an indefinite period—perhaps a year—because she had lost her flag; he could not afford to keep me there, and said I must go aboard the "Laurada" as first officer; the next night, or it might have been that same night, he asked me if so-and-so would relieve me aboard the "Bermuda," and I told him yes.

Q. But in April, 1896, did you have any conversation with Mr. Hart with reference to going into his service?

(Objected to. Objection overruled. Exception noted for defendant.)

A. In the month of April I asked Mr. Hart for a position on the "Bermuda" as second mate; I was out of employment at that time. He told me somebody else was coming as second mate.

Q. What, if anything, did Hart say when he said that somebody else was coming as second officer?

(Objected to. Objection overruled. Exception noted for defendant.)

A. He told me if the ship was going on a filibustering trip I

would not go; I told him I did not care if she went on a filibustering trip, or any other trip.

Mr. LEWIS: I make a motion to strike out the answer of the witness.

Mr. BECK: I will agree to Mr. Lewis's motion to strike out that conversation—strike out the original question.

[Memorandum: The district attorney contends that this testimony was accordingly stricken out. The court, so understanding at the time, sustains this contention. F. F. K.]

By Mr. BECK:

In April I did ship in the "Bermuda," and was transferred to the "Laurada" in July; I joined as chief officer shortly after the fourth. I think the "Laurada" first cleared to Jamaica; she got back in the latter part of July—I do not remember the date; she sailed again on the 5th of August; she first cleared for Jamaica; I think it was changed to coast-wise to Wilmington; Captain Murphy did not sail with her to Wilmington; he came aboard the ship in the morning; we were lying in the stream; he told me he had some important business to attend to ashore and did not suppose he could join the ship, and after I received stores aboard to heave up anchor, proceed to Greenwich coal piers, get coal aboard, then go down to the mouth of Christianna creek and anchor, and he would probably reach me there; he called me to the chart room and asked me to assist him in something he had to do, which I did, tracing a position on several charts; it was ten miles east of Barnegat; he told me we was going up there to meet somebody; he did not say to meet what. I was in charge of the vessel. We had our bunkers full of coal; they contained 250 to 270 tons; we had over 100 tons in the aft hole in, and 73 tons in the forward hole; 103 and 73 we had extra, besides our bunker coal; I do not know how much it would have required to take the ship to Port Antonio and back again; that is something out of my line; we burn about 12 tons a day, I suppose; she would go down there in about six and a half days and come in six and a half, besides what we used to steam around the coast picking up bananas; we coaled for the home trip as well. I do not remember how long we were at Wilmington; I should not think over half an hour, and after the custom house officers left the Laurada proceeded. There were two men hidden at the time the custom house officers came on board We anchored below Reedy Island and took on board some boats; we anchored on purpose to wait for those boats, and then proceeded; we passed the Capes on Thursday morning about 8 o'clock, and went out to sea; I relieved the captain on the bridge; he told me to take her to sea and keep out of the way of other vessels; we had from now until Sunday morning at 4 o'clock

to get off Barnegat. When Murphy and I traced the position east of Barnegat nothing was said or time set when we were to meet this party; nothing was disclosed to me; I had an idea; my attention was attracted by several things; we had a large amount of coal aboard; conversations I had with a party previous to that, not with Mr. Hart, and extra provisions coming on; we had an extra stock of provisions.

Saturday night we made Barnegat light; we laid off and on about ten miles; Sunday morning we were at our meeting place; there was a mistake in the marking of the chart. When Captain Murphy was giving me directions about going down the Delaware, he told me we would probably see Mr. Hart Sunday morning off Barnegat. On Sunday morning, just after 8 o'clock, we sighted the "Fox;" perhaps half an hour after the "Dolphin" and "Green Point" came up. I recognized several people, but do not know whether they came in the "Fox" or the tugboat. I recognized Captain O'Brien; he used to be captain of the "Bermuda"—that is one of the Hart line. I recognized Col. Nunez; also, Mr. Rodman; he came off the "Fox;" at that time he was in the service of the Hart line, and when I left Philadelphia he was on the "Bermuda." About 17 or 18 men came aboard, and after we took the men and cargo we steered southeastwardly; we went around the coast till we came to Navassa; we did not go the direct course, but went around the island of Hayti; I do not know how far that is out of the way; it might have been 500 miles; the captain told me we were not supposed to be there until a week from next Friday; we left the Jersey shore Sunday afternoon, and were not to be there until Friday of the week following; there was another reason that I know; we were to keep out of the track of ships. We got to Navassa on Thursday, ran to within a mile or two of the island and saw nothing and put to sea again; we were looking for two or three steamers; they were the "Dauntless," "Three Friends," and perhaps the "Commodore;" we arranged signals by which we were to know each other, some shirts tied aft. We sighted the "Dauntless" Friday morning; I had seen her before, and am confident it was the "Dauntless;" the name on her bow and stern were covered with canvas, painted; I had a conversation with her engineer, but do not think I saw the name on any part of the ship. We got under the lee of the land, the "Dauntless" hove up her anchor and came alongside; we coaled her up and filled her up with a part of our cargo, coal and cargo, and the men that came from the "Fox" went on her; I think they all went but one or two; on the second trip all of them did go, and she took all the rest of the cargo, so that none of the men or the cargo remained with us.

On the way down I had conversations with General Roloff; we spun several yarns together, but I do not remember what he said with regard to the proposed voyage. There were three negroes among the 18 men, and the rest were Cubans and Spaniards, and

some of them talked English. There was one young fellow there about 19, who said he was born in New York of Cuban parents; another young fellow about his age, 19; General Roloff and one of the negroes talked considerable English. I got on very friendly terms with those two young fellows; we spent a great deal of time in the chart room talking with the captain and myself. I do not know as they said about going to Cuba, but they used to be talking about promenading up 8th avenue in New York. I told them they would not find down there digging trenches anything like promenading the 8th avenue. I do not remember that anything was said about Cuba at all. I could not say very well what was said as to the purpose of the voyage and how they came to go; they did not say who asked them. I believe they told me they volunteered to go. I do not think they mentioned Cuba. As we neared Navassa one of them stowed away; General Roloff said to me, "Mr. Rand, one of those young fellows has stowed away." I told him this was not a very large ship and I guessed they could find them. I searched the ship, not thoroughly; it was not of any interest to me, I did not mind; he remained there and the boat went away with a lot of them. In the meantime the other fellow stowed away and one of the negroes. I had a conversation with General Roloff about it.

Q. What did Roloff say, if anything?

(Objected to. Objection overruled. Objection noted for defendant.)

A. He stated those two young men had been coming to him, I do not know how long, quite a while, and were only too eager to go out; he told me that the two young men had been coming to him for some little time and were only too eager to go on that trip, and they had been drawing five dollars per week while they were waiting to go with us; he told me that they were very well punished where they were, to let them remain until the second boat went. When the "Dauntless" came back we found them then, they went on board the "Dauntless," and that is the last I saw of them. On the "Dauntless," at Navassa, I recognized Captain O'Brien and Colonel Nunez. I had seen them before on the "Fox," when we were at Barnegat.

Q. Who was it that directed this body of men with reference either to transferring the cargo or telling them what to do?

A. About the cargo, we had a man aboard we took from Barnegat, called Capitan. I do not know what his last name was; he was directing the transferring of this cargo principally. On the "Dauntless" there was a fellow by the name of Charley; he was with me on the "Bermuda;" he talked English, and said he was a pilot, but did not say in what waters; he did not pilot the "Bermuda;" when the "Dauntless" came back on its first trip, I had a

talk with him about a trip we had on the "Bermuda." When we first met there, before he had made a trip from us, we had quite a conversation about several different things.

Q. Did he say anything with regard to where the "Dauntless" had come from on the occasion of this meeting at the island of Navassa, and what it had done just immediately before it came to Navassa?

A. Yes, sir; he told me he had landed a cargo. I do not think he mentioned Cuba; he said they went in and were chased off by a man-of-war; he did not say of what nation. I did not have any conversation with Charley as to the first trip of the "Dauntless," when they took the cargo from the "Laurada," not that I remember of.

Cross-examined by Mr. LEWIS:

When I was lying down off Wilmington creek, John R. Read, our collector, came down, and I told him this story; that was after I had returned on the "Laurada" to Wilmington on her return trip; after Mr. Read came aboard, the district attorney from Wilmington came aboard; he questioned me and I answered him a few questions, not all; then I was subpœnaed there in Wilmington to go to a hearing; then I was not called on the witness stand at all; the district attorney told me he thought I had been annoyed enough and he had plenty of witnesses without me. Since the return of the "Laurada" I have been doing nothing; my business is going to sea; I do not remember that I asked Mr. Hart to give me command of one of his vessels; I have been in command of his vessels; I have not been with Mr. Hart since the "Laurada's" return. I am on good terms with Mr. Hart now, fairly good. I did not have a quarrel or controversy with Mr. Hart about leaving the ship at Wilmington when there was nobody in charge of it, and the captain was under arrest. When the "Laurada" was off Barnegat the launch and the tugboat and lighter came alongside; I saw the whole occurrence; Mr. Hart was not there, no, sir; I was rigging up purchases, derricks to lift out cargo; there were five or six of the men on the "Fox" I think worked a little while helping to load the stuff on the "Laurada," and they got played out and knocked off.

I never saw an arm the whole passage out, to my recollection; I did not see the men drilled or uniformed; I did not see them practicing with rifles or with cannon. I became acquainted with General Roloff on board; he was lying down on the quarter deck pretty near the whole passage. I saw large boxes opened, and small boxes taken out; those boxes had rope handles to them; they were transferred to the "Dauntless" at Navassa; when the goods were transferred from the "Laurada" to the "Dauntless" they were still in those boxes. I do not recollect that I saw a gun or cartridge during the entire voyage, except I fired off my own revolver I used to carry,

and the second mate did the same one day; my pistol was out of order and I was trying to get it fixed by one of the engineers; the second mate came up and gave me cartridges that fitted my pistol; we both fired off, I suppose, a dozen cartridges each; that is all the firearms I saw to my recollection.

When the "Dauntless" left the "Laurada" at Navassa, on her first trip, those three men that were stowed away were aboard the "Laurada;" General Roloff remained aboard, and there were two or three men out of the "Dauntless" that remained on board. When the "Dauntless" returned to the "Laurada" I do not think she brought back with her the men she had taken from the "Laurada;" I think some remained back; I think there was more than one remained behind; a portion of them came back, I could not tell how many. When the "Dauntless" left the second time all of the men went, every soul. I do not know whether the men with this stuff ever went to Cuba or not. Navassa is about 90 miles from Cuba. I have not been arrested in connection with this matter, except as a witness; I have not been promised immunity from prosecution. From the time I returned from sea my expenses have been paid by myself; I have not been getting any fees or expenses from any person else; I have been living at 308 Race street.

JOSEPH D. NICOLS, sworn. Examined by Mr. BECK:

I was mess-room steward on board the "Laurada," and was employed by Captain Murphy. We sailed on Wednesday, August 5th. Mr. Hart told me to take the meat and ice off the ship's deck, that he didn't buy his provisions to be wasted; that was on the "Laurada;" that night the "Laurada" pulled out from the wharf and went out in the stream. The night we sailed we took some coal on, and when we got below Wilmington we took some boats on. Sunday morning after breakfast we took a cargo and men on board off the Jersey coast some place; there were 24 men came on board; they were Cubans; I was told they came from Atlantic City on the "Richard K. Fox;" I recognized among them Mr. Rodman and Capt. O'Brien. These Cubans did not bring any food with them; we had sufficient food for them on board the "Laurada;" I had no directions from anybody for this extra supply of provisions, and when we left Philadelphia I did not know that these extra men were coming on board. After we left Barnegat and were proceeding southward, these men were unpacking these cases, taking some boxes out of them and storing them in the wings of the vessel; they were making sacks, cartridge belts and all like that; I do not know what they were for. Gen. Roloff told me to go forward and call Captain Sutro; I called him; when he called aft Gen. Roloff spoke to him and gave him a piece of paper, and this man went down into the ship's hold and commenced to sort the boxes and rifles and things down there. When we got to Navassa we met the "Dauntless;" I seen the name

on the axe-handles and buckets. On the way down to Navassa I had conversation with the men that were on board; they said they was going to Cuba to fight Spaniards; they were the men that came on the "Fox;" one of them was Ricardo, a dark fellow, a Cuban; the pilot also said he was going to Cuba to fight, he said he was the pilot to where they wanted this stuff to be landed; he said he lived in Cuba; he said he was a pilot there. I seen Cuban flags; I seen them on those cartridge belts; there was some nailed up in boxes down in the cabin, and then on the belts there was a Cuban flag on each side; they said, the men said, they were going to San Diego, Cuba. When we got down to Navassa signal was given, four shirts were put on the aft davits of the "Laurada;" the tugboat "Dauntless" blowed a whistle. Captain O'Brien and Col. Nunez were on board the "Dauntless;" Capt. O'Brien is the late captain of the "Bermuda;" I saw Col. Nunez on that Sunday morning when he came on board from the "Dolphin." He was addressed as Col. Nunez. I saw Butler on board the "Dauntless;" he was the cook, steward; I see him here to-day. Captain Sutro was in charge of the men, giving them orders in Spanish; I understand a few words.

Cross-examined by Mr. LEWIS:

Some rifles came aboard the "Laurada" from the barge off Barnegat; Capt. Sutro cut some of those bags open, and there were rifles in them, five or six rifles in each bag, and the bags sewed up again. I don't know anything about the rifles down in the chain locker. I went ashore at Port Antonio. I am now living on Lombard street; I don't know the number; I have been living there three or four months; I lodges there; two of the other witnesses lodges there; I am in charge of myself there; I have been receiving $15 a week; the United States pays it; I get it from a man; I don't know his name; he is a white man; he comes any time in the day; he comes every week; I was getting $20 a month as steward; I live in Kingston, Jamaica. I left the "Laurada" at Port Antonio, Jamaica; I don't know how many of the "Laurada's" crew left there; I was looking out for myself; I seen some of them there; I seen Cowley, Simpson and Heath; I don't know where the house was in Port Antonio where I lived; I don't know the people's name.

JOHN GREENWOOD, sworn. Examined by Mr. BECK:

I was a fireman on the "Laurada" on this trip. I have no idea of how many tons of coal she can carry in her bunker. I guess she would burn about 11 or 12 tons a day; there was more than necessary to take her to Port Antonio and back. I do not know how many tons were transferred to the "Dauntless" at Navassa. When we left Philadelphia and got to Greenwich there was some gentlemen come on board. On Sunday morning just after breakfast, when we were outside the Capes, there were about 24 or 25 men came on

board. After we left that spot, while we were out at sea, I spoke to some of them, and they said they were going to Cuba to fight against the Spaniards. As much as I could experience there was General Roloff and Captain Sutro had charge of these men. I was told by Captain Murphy that if I would help to put coal on the "Dauntless" I would get a dollar for doing it. He said I would be paid by General Roloff; the money was handed from General Roloff to George Cowley, and George Cowley paid me. General Nunez told me that if I found these stowaways I would be paid a dollar apiece for finding the three of them.

Cross-examined by Mr LEWIS:

I am now getting $15 a week. I live in Philadelphia, some place. I don't know the name of the street. I think it is Pine street. I have been living there since last September. I was told to be here when called upon by the American Consul in Jamaica to do so. I left the "Laurada" in Jamaica. When I was told to come here I was not told how much I was going to get. I was told that I would be sent here; the Spanish Consul didn't have anything to do with that; Mr. Bowen came to my house for me. He is a water policeman in Jamaica. I did not say in Wilmington that I was told by the Spanish Consul in Jamaica to come here. When I move around from place to place to testify I pay my railroad fare myself. I am getting my weekly wages and use my $15 for that purpose.

Q. I want to ask you whether you were not convicted in Port Antonio, by Justice Harold Perry, and sentenced to one year at hard labor in the general penitentiary, and served that time for attempting to poison the Rev. Mr. Hardy.

A. I was taken up under false pretences, and then I was sentenced. I served my time. I was in the employ of Rev. Mr. Hardy at the time; the charge against me was mixing iodoform in the food.

By the COURT:

Q. Was it true?

A. That I did it?

Q. Yes.

A. It was not true, but I was convicted and sentenced and served in jail.

JAMES DIXON, sworn. Examined by Mr. BECK:

I was a fireman on the "Laurada." I saw these men come aboard off Barnegat. They left the "Laurada" at Navassa. I had conversation with three of them. They asked me to stow them away, because they didn't want to go to Cuba to fight. I did not do it; it was none of my business to do it. The "Laurada" met the "Dauntless" off Navassa. I knew Colonel Nunez who was on the "Dauntless;" also the cook who is here; that is the cook. When

the "Dauntless" came back from her first trip I had a talk with the pilot on her. He said the Cubans called him pilot; him and me were sitting on the bridge, and he had some small grapes, and I asked him where he got those grapes, and he said he got them in Cuba. He said he hailed from Cuba. When the "Laurada" met the "Dauntless" there were whistles blown; the "Laurada" blew the whistles, and the "Dauntless" returned them. I didn't see no other signal.

Cross-examined by Mr. LEWIS:

My business is fireman. I have been acting as fireman since last May. I only made one trip on the "Laurada;" my business before that was shopkeeper in Jamaica for three years; my home is at St. Elizabeth. I used to work on the coast as stevedore. The collector of customs brought me here from Jamaica; a man named Bowen came along with me and also with Cowley and Greenwood; all of us came on the same ship. I don't know who paid my expenses. I did not pay them. I get $15 a week for coming here; me alone went to the collector of customs at Jamaica; my present home is in Jamaica; Bowen is a water policeman in Jamaica. I have been living here since November, in Lombard street. I don't know the number of it; two other witnesses, Nichols and Simpson, live there. I get $15 dollars every week. I went and got it. I know the place. I know where I go. I couldn't tell very much about it; when I came from Jamaica a gentleman came and met me and took me there. I stop here, not doing anything, and they told me they would give me $15 a week to keep me here.

ALBERT BUTLER sworn. Examined by Mr. BECK:

I was the cook of the "Dauntless" last summer; when I went out as cook she started from Brunswick, Georgia. I do not know when she left Brunswick or what time in August it was. I have no rememberance of what she left for. I was on one trip with them, and that is all. I don't want to say anything, gentlemen, because I don't want to incriminate my own self.

GEORGE ROBERTS sworn. Examined by Mr. BECK:

I was a seaman on board of the "Laurada." Mr. Rodman took me to Mr. Hart. Mr. Hart asked me how long it would take me to get my clothes, and I told him it would take me an hour and a half; that was on Wednesday, the 5th day of August, 1896; as a result, I went and got my clothes and went on board. When we went to sea, we took extra passengers on board; 16 or 17 men came off on a white launch off the coast; the name of the launch was "Richard K. Fox." Then the ship went down off Navassa and met the "Dauntless" there; the signals I seen were four white shirts in the after davit of the "Laurada;" the "Dauntless" blew a whistle;

the "Dauntless" took part of the cargo and coal and went away; she came back on Sunday at 1 o'clock and took the rest of the cargo. I knew General Roloff; also Colonel Nunez; we first met Colonel Nunez off the coast on the "Dolphin;" he did not go down to Navassa on the "Laurada;" we met him down at Navassa on the "Dauntless." I did have something to do with putting ice and meat on board of the "Laurada" at Pier 11; Mr. Hart directed me; he told me to lend a hand and get the provisions on board the "Laurada;" that was about 10 o'clock the day she sailed, the 5th day of August.

Cross-examined by Mr. LEWIS:

I get $10 a week and board; my board is about $5 a week; nobody told me about it. I was sent for; nobody told me. I went there myself and got it; the rest of the fellows went there and I went there. I went with one man, Cowley; 5th and Chestnut; Cowley told me that if I came up here they would pay me for the time I lost. I left the "Laurada" off Wilmington, Delaware, when she came back. I have been to Richmond, Virginia. I went away in a schooner two days after I got off the "Laurada," and came back here some time in November. I am getting $10 a week and my board from the latter part of November or the 1st of December.

Mr. Beck offers in evidence the photographs, exhibits referred to, and chart.

The Government rests.

Mr. KER: There are two indictments in this case, and both are on trial before the jury. One indictment contains eight counts; the other contains twelve counts. I make a motion that the district attorney be compelled to elect upon which count in each indictment he will proceed before the jury, and upon which bill of indictment; and I ask also that a nolle prosequi be entered on the counts on which he refuses to proceed.

Mr. BECK: It was by agreement of counsel that both bills of indictment were tried at the same time.

The COURT: The court must refuse this motion. I think when we come to the close of the case we will have no trouble on this subject at all.

(Exception for defendant.)

And witnesses were called on behalf of the defendant, and examined as follows:

JAMES A. CAREY, sworn. Examined by Mr. KER:

I am connected with the police department of Philadelphia; am special officer of the Third police district—that includes the neighborhood of Pine street, South and Lombard streets; it is part of my duty to become acquainted with everybody in the district and every

house in the district, as far as possible. I know George Cowley, the colored man who was on the stand; I am acquainted with him officially. I did go to Richmond, Virginia. (Papers shown witness.) I have seen these papers before.

Mr. Ker offers in evidence exemplification of the record of the Hustings Court of the city of Richmond, Virginia, certified to by the clerk of the court, under seal, and by the judge of the court, and by the secretary of the commonwealth of Virginia, in conformity with the Act of Congress, and reads it to the jury, as follows:

I, William P. Lawton, clerk of the Hustings Court of the city of Richmond, in the State of Virginia, said court being a court of record, do hereby certify that it appears from the records of said court that on the eleventh day of December, 1884, George Cooley was convicted in said court of resisting a police officer, and sentenced to pay a fine of fifty dollars, and the costs of the prosecution, and to be confined in the jail of said city for a term of fifteen days; and that on the ninth day of January, 1892, the said George Cooley was convicted in said court of assaulting a police officer, and sentenced to be confined in the jail of said city for a term of thirty days. And I further certify, that it appears on the records of said court that one George Cowley, alias Anthony Cowley, described as brown, five feet, five inches high, black eyes, black hair, scar on chin, twenty-two years of age, a waiter, was on the seventh day of December, 1892, convicted in said court upon six indictments for petit larceny, and was sentenced to be confined in the jail of said city for a term of thirty days in each case.

Given under my hand and seal of said court this ninth day of December, 1896.

I saw Cowley after I had been down to Richmond; he came up to me in the corrider here and spoke to me; he said, "Jim, I hope you succeed;" I said, "what do you mean by that;" he said, "I know you are after my record, the only thing ever I did was in Richmond, I was arrested there for rioting;" I said, "how do you know I am after your record;" he said, "I know, people told me, you asked them about my record;" I said, "that is all right, you don't find any fault with me for doing that, do you;" he said, "Oh! no;" he said, "of course what I am doing for these people I am getting paid for;" that is all the conversation we had; I said, "I find no fault with you for that."

Cross-examined by Mr. BECK:

I was detailed, at least I got leave of absence, to go down to Richmond; I was sent down by Mr. Ker; Mr. Ker paid my expenses.

JASPER JACKSON, sworn. Examined by Mr. KER:

I live at 917 Laros street, Philadelphia. I make this my home. I know George Cowley, who was on the stand, and have known him 15 months. I had a conversation with him about this case. He was talking to me about it. He told me he had a job paying him $15 a week, aud if he won the case he would get $15 a week as long as he lived. He was drinking, he was on a drunk; he looked to be.

GEORGE BLAND, sworn. Examined by Mr. KER:

I live 1545 Ward street, Philadelphia. I know George Cowley that was on the stand. I had a conversation with him about this case and his being a witness in it this way. It seems as if some one had been saying something to him about receiving a salary, and he said to me, "I am no stool-pigeon at all. I get paid for what I am doing. I get $15 a week for what I am doing and will get it as long as I live;" and he said, "These niggers go around here trying to find out my character or get something on me for Carey. The only one that knows anything about me is Henry Burd, and if any one hears anything about me it will be Henry Burd saying it.

Dr. ISAAC N. GOLDBERG, sworn. Examined by Mr. KER:

I know Sooy that was on the stand here the other day from Atlantic City. I judge that I have known him by seeing him, which I have been going to Atlantic City for the past 12 years, but think that I know him about two years in particular. I met him around the inlet among the yacht men. On the 16th day of November I had entered the northwest corner of this building, and as I was approaching and making for the elevator I have met Sooy and Hosey; that was the other man that said Hart took him by the neck; they were both together. Sooy had approached Mr. Hart, and Mr. Hart said, "I have got nothing at all to do with you." Sooy came back to me and said, "Doc, what are you doing here?" I said I was just going in to hear the evidence in this case. Then he said, "Are you personally acquainted with Mr. Hart?" I said, "Nothing more than what you are or other friends are." We were standing there talking, and I gave him an invitation for a little refreshments. We went across the street—the three of us—Sooy, Hosey, and myself. We went to the Girard House into the saloon, the cafe. He said to me, "If you can get me $25 I will leave this town and not give any evidence whatever." That was on the 16th. Of course we were in the court here, or in the corridor. We were together and not together, until we lost one another. On the morning of the 17th he came to me at the extreme end of the corridor and said, "I am ready to go to the grand jury, have you got any stuff," meaning money, I suppose; he said, "If you haven't got it I am ready to go

in and give my evidence." I said, "No, I ain't got any money to give you." He said, "I thought you said you would." I said, "What have I got to do with it, you made the proposition to me?" That was on the 17th. On the 18th he made a remark by saying, "Hosey knows nothing in reference to this case; he is working under evidence of mine; Hosey had come to me and said, "Doc, go ahead and give it to him, it will be all right, if you can get it give it to him, it will be all right and we will skip out." There was present and heard it, the head bartender and Mr. Edelman, and Mr. Radmus on South Eighth street. The bartender heard it, Mr. Edelman heard it, and Mr. Radmus. When Mr. Sooy and Mr. Hosey made this suggestion to me; I had called Mr. Edelman, standing close by there, for an excuse, for a light, so I would have a witness.

Cross-examined by Mr. BECK:

My business is chiropodist, for twelve years, and my place of business is 2434 North 6th street. I have known Mr. Hart about two years. I was in this government building on the morning that the case was called as others came here, to hear the trial; Mr. Hart was a patient of mine, as well as his family. I had not seen Mr. Hart before I met Sooy. When I entered the corridor, right there at the elevator entrance, Mr. Hart had just made that remark to Sooy, "I got nothing to do with you." I did not know what their conversation was; nothing more than what I heard. I could not exactly say how long I have known Sooy's companion, because down there they are all alike, you might say; that is, I know him about a year or more, and have seen him frequently on the wharf at the inlet, and talked with him sometimes to say, "How do you do," that is all; I had not gone out in his boat. I came to know Sooy by being at the inlet. John E. Mehrer and family have been patients of mine for the past ten years or over, and for that reason I have called once a week during the season. I do do not know whether Mr. Hart is a friend of his, but I go there for professional services. I have known Sooy's companion for a year or more, some call him Hoosey and some call him Hosey. I have always called him by his first name, the same as Mr. Sooy has, Nick. (Horton called forward.) That is the man. I would not say the first name was Nick; I will take an oath to the Hoosey. I did have a memorandum at the time when they gave me their full names; that I have mislaid or destroyed; I do not think I destroyed, I think I mislaid it, because they gave me that in their own handwriting. I last saw the memorandum at a cafe on Sansom street, above 8th, at an oyster place, on the 16th day of November; that was fully two hours after we left the Girard House; I asked them there to take dinner with me. After we left the Girard House we came back here to the third floor United States Court. I did not report to Mr. Hart; I had no conversation with Mr. Hart whatever. They gave me the names,

wrote it on a card; I do not think it was in the Girard House; it may have been on the street; on the impulse of the moment I could not recall where it was; I think it was in the cafe or oyster saloon on Sansom street. I would not say whether it was Hooser or Hooten or Hosey, but I do personally remember Mr. Sooy who I am more acquainted with than I am with Hosey. I will withdraw the name. There is different ways of putting the name and spelling the name. I say the name was Hoosey, the same as I did say; you asked me to recall that name. They suggested that they had better write down the names so there would be no doubt about my getting the right people.

RAYMOND EDELMAN, sworn. Examined by Mr. KER:

I know Mr. Hart and know Dr. Goldberg; I saw the man named Sooy, who was from Atlantic City on the stand here; I saw Hoosey or Horton on the stand. I am a dealer in live stock, and my place of business is 447 New Market street. I was standing on the other side of the street one day in November; I did not keep any account of the time, but it was the time Mr. Hart was to be tried the first time, so I guess you know more about it than I do; Mr. Goldberg approached the two men with blue shirts on, who, I think, in fact am positive are the same two men who I heard testify here. Dr. Goldberg stopped a few feet below me, and turned to me and said, "Have you got a light?" I walked to him and handed him a cigarette to light his from. He turned to these men and said, "What did you say?" They said, "for $25 we will testify any way Hart wants us to." I think Mr. Sooy, the one with the red moustache, is the one who said it; I think that is the one; it was one of the two; that was all was said in my hearing; that is all I know about the case. We were both together at the time. I communicated that to Mr. Hart and Mr. Ker; they were on this side of the street; I came over and told them the same day; Mr. Ker told me to go about my business and not be seen with those men. I never saw the men afterward, to the best of my knowledge, until one day this week.

Cross-examined by Mr. BECK:

I had never seen the men before to know them. The conversation was on the sidewalk on the other side of Ninth street; it was on the other side of Ninth street, on the sidewalk. I came up to hear the trial of court as a great many neighbors did. I am a great friend of Captain Hart's. I have known Mr. Goldberg professionally. I had not seen Captain Hart that morning before. I do not think I saw Mr. Hart that day, because I went down to my business. I do not recall which one of the men made the remark. To the best of my belief they were not drunk; they were not men that were intoxicated; I would have noticed that. Dr. Goldberg made

no remark that I know of. One of the men made the remark about $25. This is the best of my knowledge and belief; it is a good while; "for $25 we will testify any way that Hart wishes us to." I overheard that. They did not make it to me; they made it in my hearing. It was on the public street, numbers of people passing and repassing. I understood they were witnesses against Mr. Hart. I do not know whether I did understand that at the time; I must have understood it; the conversation would have told me that at the time, I think. I did not go and prefer a complaint; I did not know there was any complaint to make. I did not remain there, only while Dr. Goldberg lit his cigarette, I suppose a moment, and went right off.

JOHN BRISCOE, sworn. Examined by Mr. KER:

I live at 615 Mintzer street. I know George Cowley or Cooley, the witness who was examined here. He had some conversation with me in reference to this case and his being a witness; he talked with me. He lives in the same political division with me; I am the assessor of the division, and went around from house to house to take the names. About three months ago I was standing on the corner of Seventh and Lombard; Mr. Cowley came up to me and pulled out a piece of paper, and he said, "I have got to go to court this morning." I said, "What for?" He said, "a witness against John D. Hart." I asked him what was it for. He said some expedition, filibustering; I could not exactly understand quite what it was; and he said he was getting $15 a week; if this man was convicted, as long as he lived he said he would get $15 a week, if Hart was convicted. That is all the conversation I had with him until the day before yesterday he came up to me again. I was standing on the corner of 7th and Mintzer. He said to me, "I poked it up to him to-day, didn't I." That is the expression he made to me. I said "yes." He said, "I will poke more than that into him to-morrow." That is all I heard him say about this affair.

One morning we were standing there, and there was a courthouse van passing 7th and Lombard streets. The same morning he had this piece of paper there was a courthouse van passing. I asked him if he had ever been in that. He said no, not here; he never was arrested here. I said "Where at?" He said, "in Petersburg, Virginia." I said, "Do they have vans there?" He said, "no; they handcuff you and carry you from the jail to the courthouse." I said, "What was you locked up for?" He said, "for doing a job." That is the way he approached the subject to me. I asked him what the job was. He said for turning off a house, and he got six months for it; that is the expression. That is all the conversation I had with him.

Cross-examined by Mr. BECK:

The first notice to come here, Mr. Carey asked me one day, and I

told him what I had heard this fellow say. Officer Carey asked me about two months ago.

Testimony closed.

Mr. BECK. We will withdraw the indictment that relates to Navassa island; that is, proceeding from Navassa island.

The COURT. There being no objection from the defendant, the court grants the Government's motion to withdraw that bill No. 35.

Mr. KER. I renew my motion that the district attorney be required to elect which one or more of the twelve counts he will proceed on.

The COURT. Mr. Ker, on the close of the testimony, moves that the district attorney be required to elect, after the withdrawing of one indictment, what one or more counts he will proceed upon. The district attorney declining to do so, or to assent to this motion, the court says in respect to it, that this motion comes too late and therefore is not allowed.

(Exception noted for defendant.)

Mr. BECK makes his opening argument for the Government.

Mr. LEWIS makes his argument for the defendant.

At the conclusion of Mr. Lewis's argument, Mr. Ker stated: I have an application to make to the court. On Saturday afternoon last, a gentleman came to my office to see me, and I was absent.

Mr. BECK. I would like to know what you are going to say in the hearing of the jury.

The COURT. You had better inform the court privately.

Mr. KER. No, sir; it is a public application.

The COURT. Make it in writing.

Mr. KER. I do not know of any rule of this court that requires it to be made in writing. If your honor says so, I will have to do it.

The COURT: The court informs you that at the present state of the case any application of any extraordinary character must be made in writing.

Mr. Ker submitted in writing the following application to the court:

The defendant moves for leave to examine Henry Lecaste, as a witness for defendant, whose testimony is after discovered evidence, which came to the knowledge of counsel for the defendant last Saturday, and after the evidence on both sides had been closed. The witness will testify to a conversation with and between the witness Horton and a detective, in which the detective bribed the witness Horton to appear and swear falsely against the defendant.

Application objected to by Mr. BECK.

The court directed the clerk to enter the application and refused to allow it.

(Exception for defendant.)

DEFENDANT'S POINTS.

The learned judge is requested to charge the jury, on behalf of the defendant, as follows:

1. It is entirely lawful for any number of men to leave the United States together, with intent to go to Cuba and there join the Cuban army and fight against the Spanish Government, provided the men do not in the United States combine and organize themselves into a military body under some leadership for that purpose, and are not supplied with arms and ammunition or munitions of war for their own personal use, and the transportation of such body of men, knowing their intention, does not constitute any offense within the meaning of our statute.

2. It is no offense against the laws of the United States to transport arms and ammunition or munitions of war to Cuba, whether they are to be used in war against the Spanish Government or not; and it is no offense to transport such arms and munitions of war to Cuba, for the use of the Cuban army against the Spanish Government, and with the intention thereby to aid and assist the Cuban army.

3. It is no offense against the laws of the United States to transport persons intending to enlist in the Cuban army to fight against the armies of the King of Spain, and upon the same ship to transport arms and munitions of war carried in boxes as merchandise, provided such persons do not in the United States combine and organize themselves under some military leadership for that purpose and provided the arms and ammunition so transported are not intended for their use, and the intention of the men to enlist when they get to Cuba would not make unlawful an expedition which is otherwise lawful.

4. Even if the jury find from the evidence that the men who were on board the "Laurada" did go to Cuba, and did land there the arms and ammunition that had been on board that vessel, yet if their intention was to land the arms rather than use them, the defendant cannot be convicted as indicted unless he knew that the men intended to fight with the arms against the Spanish Government.

5. If the jury find from the evidence that the men who came on board the "Laurada" acted as porters or stevedores to handle the arms and ammunition in packages on the voyage, or to transport the packages on shore, even if those men had the intention of ultimately joining the Cuban army, the defendant must be acquitted.

6. It is the duty of the Government to prove, beyond a reasonable doubt, that the men taken on board the "Laurada" had previously combined and organized themselves into a military body, for the purpose of going to Cuba to join the Cuban army and fight

against the Spanish Government, and that the arms and ammunition were not merely merchandise intended for some other persons, but were to be used by the very same men who were on board the "Laurada" for the purpose of making war in Cuba against the Spanish Government, and that the defendant, knowing the expedition to be an unlawful one, did, in the Eastern District of Pennsylvania, begin it, or set it on foot, or provide or prepare the means for it; and if the Government has failed to prove any of these facts conclusively, to the satisfaction of the jury, and beyond a reasonable doubt, the jury must find the defendant not guilty.

7. Even if the jury should find that this was a military expedition they must also find before they can convict the defendant that he knew of its illegal character at the time the "Laurada" sailed from this District; and the fact that the defendant had some connection with the "Laurada," either as agent for the owner, or its charterer, or as president of the J. D. Hart Company, would not be sufficient and conclusive evidence of guilt as to warrant his conviction.

8. The mere fact that the defendant knew that men and arms were to be taken on board the "Laurada," both to be carried together to the island of Navassa, is not sufficient to convict him, and the transportation of the men and the transportation of the arms and ammunition in boxes from one point in the United States to the island of Navassa, which is another point within the jurisdiction of the United States, is not a violation of law.

9. Even if the defendant knew that these men and these arms were to go to or be transhipped at Navassa, that does not raise a presumption that the defendant knew they were to be taken from thence to Cuba, and were to be used by these men to fight against the Spanish Government.

10. There is no evidence whatever that the defendant provided or prepared the means for transhipping the men and arms from Navassa to Cuba; and transporting the men and arms to Navassa alone is not a violation of the statute. To convict the defendant the jury must believe beyond all reasonable doubt that the defendant actually knew that the arms and ammunition were to go together to Cuba, and that the men intended to use the arms to fight against Spain.

11. Secrecy and mystery in the departure of the "Laurada" in the placing of men upon her, of the arms upon her and her avoiding other vessels, and taking a circuitous route to Navassa are not of themselves evidence of criminality and are just as consistent with a lawful as with an unlawful enterprise, and are not inconsistent with the mere landing of contraband of war upon the island of Cuba—a thing not against the laws of the United States.

12. The defendant is entitled to all reasonable presumption in his favor; and if the jury find that all the evidence and circumstances relied on by the Government to show guilt, when taken to-

gether are as compatible with the theory of innocence as with the theory of guilt, it would constitute a situation of reasonable doubt, and the jury should find the defendant not guilty.

13. The defendant is entitled to the benefit of all doubt or doubts arising from the evidence or from the application of the law to the evidence, and if such doubt arises or exists in the minds of the jurors, it is their duty to find the defendant not guilty.

14. Under all the facts and circumstances and evidence in the case, the jury must find the defendant not guilty.

JOHN F. LEWIS,
WILLIAM W. KER,
Attorneys for Defendant.

CHARGE OF THE COURT.

Butler, J.: Gentlemen of the jury, the trial of the case has occupied a good deal of time. No more, however, in the judgment of the court, than its importance and the numerous facts involved required. It has been well and ably tried by counsel on both sides, and, what is equally agreeable to the court, it has been tried in excellent temper. I would be glad if I could submit it to you without further detention, but the numerous points presented will necessitate the expenditure of a greater length of time in submitting it to you than the court usually occupies. I bespeak your very earnest attention.

The defendant is indicted under Section 5286 of the Revised Statutes of the United States, which reads as follows:

"Every person who within the territory or jurisdiction of the United States begins or sets on foot or provides or prepares the means for any military expedition or enterprise to be carried on from thence against the territory or dominion of any power, prince, or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor."

As you observe, the statute creates two offenses, the one setting on foot, within the United States, a military expedition; and the other, providing means for it, as, for instance, means for transportation. Although the defendant is indicted for both offenses, the Government is pressing a conviction on the latter only. The case is thus simplified. To justify a conviction it must be proved that a military expedition was organized in this country; and that the defendant provided means here, in Pennsylvania, for assisting it on its way to Cuba, as charged, with knowledge that it was such an expedition. Thus you see two questions are presented for consideration, first, was such an expedition organized in this country; second, did the defendant provide means for it, with knowledge of the facts as charged?

In passing on the first question it is necessary that you shall

understand what constitutes a military expedition, within the meaning of the statute. For the purpose of this case it is sufficient to say that any combination of men organized here, in this country, to go to Cuba and make war upon its government, provided with means—with arms and ammunition—(this country being at peace with Cuba), constitutes a military expedition. It is not necessary that the men shall have been drilled, or put in uniform, or prepared for efficient service, nor that they shall have been organized according to the regulations which ordinarily govern armies. It is sufficient that they shall have combined and organized in this country as a body, to go abroad, and as such make war on the foreign government, having provided themselves with means to do so. If they have thus combined and organized it is not necessary that the arms shall be carried upon their persons here, or on their way; it is sufficient that arms have been provided for their use when occasion requires. It is unimportant that the organization is rudimentary, imperfect, and inefficient; it is enough to meet the requirements of the statute that the men have united and organized with the purpose and object stated, voluntarily agreeing to submit themselves to the orders of such person or persons as they have selected. In the nature of things the organization must be voluntary and imperfect. Obedience to leaders or officers selected here could not be enforced. The men would be subject to no legal obligation, and could not be compelled to obey, at least, until the expedition has left our shores, and the circumstances have become such that they are no longer free agents, but for want of legal protection have become subject to the will of such leaders, supported by the majority of their fellows. Nor is it important whether the expedition intends to make war as an independent body or in combination with others in the foreign country. If men go without such combination and organization, to volunteer as individuals in a foreign army, they do not constitute a military expedition organized here; and the fact that the vessel carried men under such circumstances, also carried arms as merchandise, is not important.

The defendant has asked the court to charge you as follows:

"1. It is entirely lawful for any number of men to leave the United States together, with intent to go to Cuba and there join the Cuban army and fight against the Spanish Government, provided the men do not in the United States combine and organize themselves into a military body under some leadership for that purpose and are not supplied with arms and ammunition or munitions of war for their own personal use, and the transportation of such a body of men knowing their intention, does not constitute any offense within the meaning of our statute."

This point is fully answered by what I have already said. It is lawful for men, many or few, to leave this country with intention to volunteer in the Cuban army, provided they have not combined

and organized in this country, as previously described, and the transportation of such individuals would not constitute an offense against the statute.

"2. It is no offense against the laws of the United States to transport arms and ammunition or munitions of war to Cuba, whether they are to be used in war against the Spanish Government or not; and it is no offense to transport such arms and munitions of war to Cuba, for the use of the Cuban army against the Spanish Government and with the intention thereby to aid and assist the Cuban army."

This is affirmed. Although a part of the statement of the point may be open to question, the circumstances of this case do not call for questioning it, and it is, therefore, affirmed as written.

"3. It is no offense against the laws of the United States to transport persons intending to enlist in the Cuban army to fight against the armies of the King of Spain, and upon the same ship to transport arms and munitions of war carried in boxes as merchandise, provided such persons do not in the United States combine and organize themselves under some military leadership for that purpose, and provided the arms and ammunition so transported are not intended for their use, and the intention of the men to enlist when they get to Cuba would not make unlawful an expedition which is otherwise lawful."

This point is affirmed, reminding you, in this connection, of the importance of remembering the court's previously stated definition of the term "military expedition."

"4. Even if the jury find from the evidence that the men who were on board the 'Laurada' did go to Cuba and did land there the arms and ammunition that had been on board that vessel, yet, if their intention was to land the arms rather than use them, the defendant cannot be convicted as indicted unless he knew that the men intended to fight with the arms against the Spanish Government."

This contains nothing that is not covered by what has been said. I will repeat, however, that the defendant cannot be convicted unless it is proved that when he started the "Laurada" out from Philadelphia (if he did start her out), that the expedition was military, such as I have described. Taking arms to, and landing them in, Cuba, is not of itself an offense against our laws.

"4. If the jury find from the evidence that the men who came on board the 'Laurada' acted as porters or stevedores to handle the arms and ammunition in the packages on the voyage, or to transport the packages on shore, even if those men had the intention of ultimately joining the Cuban army, the defendant must be acquitted."

This point is fully answered by what has been already said. Of course, if the men did not go organized to fight, but simply to han-

dle and land the cargo of arms and other stores, they did not constitute a military expedition.

"6. It is the duty of the Government to prove, beyond a reasonable doubt, that the men taken on board the 'Laurada' had previously combined and organized themselves into a military body, for the purpose of going to Cuba to join the Cuban army and fight against the Spanish Government, and that the arms and ammunition were not merely merchandise intended for some other person, but were to be used by the very same men who were on board the 'Laurada' for the purpose of making war in Cuba against the Spanish Government, and that the defendant, knowing the expedition to be an unlawful one, did in the eastern district of Pennsylvania begin it, or set it on foot or provide or prepare the means for it; and if the Government has failed to prove any of these facts conclusively to the satisfaction of the jury, and beyond a reasonable doubt, the jury must find the defendant not guilty."

While I doubt the accuracy of this point in one or two particulars, I affirm it, nevertheless, in view of the facts of this case, or rather the evidence, and direct the jury to follow it, bearing in mind, however, that if the men had organized in this country to go to Cuba and fight, a strong presumption arises that the arms taken along were taken for their use, to the extent they needed arms, in the absence of evidence to the contrary.

"7. Even if the jury should find that this was a military expedition they must also find before they can convict the defendant that he knew of its illegal character at the time the 'Laurada' sailed from this district; and the fact that the defendant had some connection with the 'Laurada,' either as agent for the owner or its charterer, or as president of the J. D. Hart Company, would not be sufficient and conclusive evidence of guilt as to warrant his conviction."

All that is material in this point, and can be affirmed, has been answered, and will, no doubt, be answered again in the course of the charge.

"8. The mere fact that the defendant knew that men and arms were to be taken on board the 'Laurada' both to be carried together to the island of Navassa, is not sufficient to convict him, and the transportation of the men and the transportation of the arms and ammunition in boxes from one point in the United States to the island of Navassa, which is another point within the jurisdiction of the United States is not a violation of the law."

Everything stated in this point which should be affirmed is fully covered by what has already been said. I will, however, repeat here that if the defendant had knowledge that the expedition was unlawful, as charged, and he provided the means here in this district to carry it to Navassa, on its way to Cuba, knowing that the latter was its destination, he is guilty of the offense charged. It is

not necessary that he should provide the means for carrying it to Cuba. If he provided means here for carrying it any part of the journey, with knowledge of its destination and of its unlawful character, he is guilty.

"9. Even if the defendant knew that these men and these arms were to go to, or be transhipped at Navassa, that does not raise a presumption that the defendant knew that they were to be taken from thence to Cuba, and were to be used by these men to fight against the Spanish Government."

I do not find anything in this point that has not been sufficiently answered. Of course, as before stated, it is necessary to prove that the defendant had knowledge that the expedition was military and was going to Cuba to justify a conviction.

"10. There is no evidence whatever that the defendant provided or prepared the means for transhipping the men and arms from Navassa to Cuba, and transporting the men and arms to Navassa alone, is not a violation of the statute. To convict the defendant the jury must believe, beyond all reasonable doubt, that the defendant actually knew that the arms and ammunition were to go together to Cuba and that the men intended to use the arms to fight against Spain."

This point has been fully answered, in so far as it can be affirmed.

"11. Secrecy and mystery in the departure of the 'Laurada,' in the placing of the men upon her, of the arms upon her, and her avoiding other vessels, and taking a circuitous route to Navassa, are not of themselves evidences of criminality, and are just as consistent with a lawful as with an unlawful enterprise, and are not inconsistent with the mere landing of contraband of war upon the island of Cuba—a thing not against the laws of the United States."

The subject involved in this point is one for the jury alone. It has been fully discussed by counsel on both sides, and the jury must pass upon the weight that should be given to the circumstances here referred to. The point does not present a question of law for the court, but one of fact, that has been fully considered by counsel, and must be passed upon by the jury. As the jury has observed, the defendant contends that the evidence here invoked by the Government justifies a belief that the object of the expedition was simply to carry arms to Cuba—not a military expedition, which would be an offense against the laws of this country, though the cargo would be contraband of law and liable to confiscation there. The defendant's counsel argues that all the suspicious circumstances cited by the Government are as consistent with that supposition as with the charge of the Government that this was a military expedition. The matter is one of fact for you and not for the court.

"12. The defendant is entitled to all reasonable presumption in his favor; and if the jury find that all the evidence and circumstances relied on by the Government to show guilt, when taken

together, are as compatible with the theory of innocence as with the theory of guilt, it would constitute a situation of reasonable doubt, and the jury should find the defendant not guilty."

This is true. The point is affirmed, if all the circumstances cited by the Government in this connection are as consistent with a belief of innocence as they are with the Government's position and charge of guilt, of course, you would necessarily disregard them. There must be a clear preponderance of inference from these circumstances against the defendant to entitle them to consideration. Where the circumstances of the case are as consistent with a presumption of innocence these circumstances cannot be used as evidences of guilt. That is true as a legal proposition, but it will be for you to say whether the circumstances referred to and in part relied upon by the Government, the circumstances of suspicion and secrecy, are as consistent with a belief of innocence in the prisoner as a belief of guilt.

"13. The defendant is entitled to the benefit of all doubt or doubts arising from the evidence or from the application of the law to the evidence, and if such doubt arises or exists in the minds of the jurors, it is their duty to find the defendant not guilty."

This seems to add nothing to the point just read, and is affirmed. That is no more than saying that the Government must make out a clear case. Not a case that is proved beyond the possibility of mistake, because no case is ever so proved; but a case that thoroughly satisfies the minds of the jury. It means that and nothing more. If the jury is not fully satisfied, but doubts, the prisoner is always entitled to the benefit of the doubt and must be acquitted. Where the minds of the jury are convinced, there is no doubt such as the law recognizes, and in such case it is the duty of the jury to convict.

"14. Under all the facts and circumstances and evidence in the case, the jury must find the defendant not guilty."

I disaffirm that point.

To avoid misunderstanding, which might arise from reading the numerous points, I will repeat what I said at the outset respecting the law:

To justify a conviction it must be proved that a military expedition was organized in this country, and that the defendant provided means here, in Pennsylvania, for assisting it on its way to Cuba, as charged, with knowledge that it was such an expedition. Thus, you see, two questions are presented for considerations, first, was such an expedition organized in this country? Second, did the defendant provide means for it with knowledge of the facts as charged?

In passing on the first question it is necessary that you shall understand what constitutes a military expedition within the meaning of the statute. For the purposes of this case it is sufficient to

say that any combination of men, organized here in this country, to go to Cuba, and make war upon its government, provided with means (with arms and ammunition), this country being at peace with Cuba, constitutes a military expedition. It is not necessary that the men shall have been drilled, or put in uniform, or prepared for efficient service, nor that they shall have been organized according to the regulations which ordinarily govern arms. It is sufficient that they shall have combined and organized in this country as a body, to go abroad, and as such make war on the foreign government, having provided themselves with means to do so. If they have thus combined and organized it is not necessary that the arms shall be carried upon their persons here, or on their way; it is sufficient that arms have been provided for their use, when occasion requires. It is unimportant that the organization is rudimentary, imperfect and inefficient; it is enough to meet the requirements of the statute that the men have united and organized with the purpose and object stated; voluntarily agreeing to submit themselves to the orders of such person or persons as they have selected.

Your first inquiry therefore will be, was the expedition which was taken on board the "Laurada" off Barnegat, and carried to Navassa Island, in sight of Cuba, a military expedition, within the meaning of these terms, as I have defined them, set on foot in this country, to make war against the government of Cuba? That the destination of the expedition was Cuba does not seem open to reasonable doubt, though this as well as all other facts in the case, must be decided by you. The people of the island of Cuba, or a part of them, are engaged in war against their government. Several of the men composing the expedition said, if the evidence is believed, and that, of course, is for you, that Cuba was their destination, and that they were going there to fight the Spanish; and when transferred to the "Dauntless" at Navassa they went in that direction. The men, according to the testimony, were principally Cubans. Was the expedition, however, military, such as I have instructed you the statute contemplates? In other words, had the men combined and organized before leaving this country, and provided themselves with arms, as before described for the purpose of going to Cuba to make war against the government? They came to the "Laurada" in a body, apparently acting from a common impulse as by preconcert. The arms and other military stores came at the same time, though from New York. The men immediately went to work, transferring the arms, ammunition and other military stores, from the schooner on which they came to the "Laurada," under the orders of one or more of their number. On the way to Navassa they continued to work about this cargo, opening boxes, assorting ammunition and making sacks from canvas brought for the purpose, as the witnesses described, under the orders of Captain Sutro,

who, the witnesses say, conferred with and received orders, or appeared to receive orders, from General Roloff. When approaching Navassa, three of the men, wishing apparently to desert, if the testimony is believed, and that is a question for you, withdrew from the others and hid themselves in a part of the ship where they supposed discovery might be avoided, whereupon, as I understand the testimony, and you will judge whether I am right or not, General Roloff had them sought for, brought out and sent upon the "Dauntless" with the other members of the expedition. If this latter statement, respecting the desertion of these men, or attempted desertion, hunting them up, bringing them out, and requiring them to go, is true (and you must judge whether it is or not), it shows that the men were not at that time, at all events, free agents, but were subject to orders which they could not disobey. From these circumstances and from all the evidence bearing on the subject, you must determine whether the men had combined and organized as I have described, in this country, to go to Cuba as a body and fight, or were going as individuals subject to their own wills, with intent to volunteer in the insurgent service there, if they should see fit to do so, on arriving there. You must judge from the evidence whether the men had combined, organized and consented to the government of one or more of their number here in this country, to go to Cuba and make war there upon the Spanish Government, or whether they were going individually, each on his own account, with liberty to volunteer or not, as they saw fit, when they reached Cuba.

If you do not find that they had so combined aud organized before leaving this country, then they did not constitute a military expedition, and the defendant must be acquitted. If, on the contrary, you find that they had so combined and organized in this country, you must next determine whether the defendant provided means for their transportation, not the whole way, but to Navassa. It is not necessary that he should transport them to Cuba, as I have said; if he provided means for their transportation to Navassa on their way to Cuba, and made this provision here, in Pennsylvania, with knowledge of the character of the expedition and of its destination, he is guilty. The transportation was made by the "Laurada." That is an undisputed fact. That somebody here provided her for this service, seems clear, though this question, as other questions of fact, I repeat, is for you. It seems to be beyond room for controversy that somebody here provided the "Laurada" for that service, and provided her with stores and extra boats. I say it appears so to the court, but still you are not bound by what the court thinks of the evidence. The fact is for you. She started from the port of Philadelphia, taking on here, if the witnesses are believed, an unusual supply of coal for her alleged voyage, and an unusual supply of other stores. After clearing for San Antonio, she surrendered

this clearance, taking another for a coastwise trip to Wilmington, and upon her arrival there immediately took a clearance for Port Antonio again. After passing down the river twenty miles further, she anchored and awaited the arrival of small boats brought down from Camden, on an order given in Philadelphia. She then proceeded to the breakwater and out to sea; but instead of going on a direct course to San Antonio she turned northward and went to the point off Barnegat, where she took on the men, arms, ammunition and other military stores before alluded to. She then proceeded, by the route described, to Navassa, where she transferred the men and other cargo to the "Dauntless," together with the boats, or a part of them, taken on down the Delaware. It further appears, as her first officer, Rand, testifies, that her captain pointed out to him on the chart before leaving Philadelphia, the location of Barnegat as their next objective point after passing the breakwater. When she got there she took on the cargo, under circumstances which seem to leave no room for doubt that she expected it. Now, gentlemen, you must judge from these circumstances, from all the testimony relating to the subject, whether it is not reasonably clear that the "Laurada" and her supplies, including extra boats, were not provided here, in this district, expressly to carry the expedition subsequently taken on off Barnegat. If there were, you must next determine whether it is proved that the defendant, Hart, made this provision. The vessel was in the service, at the time, as it would seem, of the John D. Hart Company, of which he is president and manager. Who else, or whether anybody else is in the company, does not appear, so far as I remember. If there is testimony showing that anybody else is in that company you will remember it. There may be. I remember no such testimony. It is clear, however, according to the testimony, that he was the president of that company; occupied the office, and managed its business. The evidence, if believed (and it is uncontradicted), shows that the defendant gave several orders respecting the vessel about this time, when she came in before this trip and when she was going out. Among these orders was one, if not both, respecting her clearance; that he directed supplies to be put on board; that he took part in employing her crew; and that while the order to overtake her down the Delaware with extra boats was not signed by him, nor anybody else, the tugboat man, Smith, usually employed by the John D. Hart Company, who had taken the "Laurada" out and turned her down the river that day, to whom this order for extra boats was delivered unsigned, executed it, and presented his bill for this service to Mr. Hart, I believe, the next day or soon after, and that Mr. Hart tore it up, did not hand it back, saying he knew nothing about the matter. It was, however, paid a day or two later, by the hand of some one whom the witness says was unknown to him. That Mr. Hart

knew that the "Laurada" was going to the point off Barnegat to take the men on board would seem to be clear, if the witnesses are believed, and whether they are to be believed or not is for you, because they testify that he procured the "Fox" and sent the men on her to the point where they met the "Laurada." If this latter statement is true, the inference seems irresistible that he knew the "Laurada" was going there for these men. From these circumstances and from all other evidence, and with a recollection of what counsel have said, you must determine whether the defendant, here in Philadelphia, provided this vessel and her supplies for the purpose of carrying the expedition to Navassa, on its way to Cuba. If you do not find he did, you will acquit him. If, on the contrary, you find he did you will next pass to the only remaining question in the case. Did he know at the time that the expedition was a military expedition, as charged, when he provided the means for its transportation? To satisfy you he did, the Government points to what it calls the suspicious circumstances attending the fitting out of the vessel, her clearances, and voyage from this port to the point off Barnegat. What weight these circumstances should have in deciding the question of knowledge on his part is entirely for you. The Government that the object was to deceive the officers of the United States, which, it says, the defendant could have no object in doing if he did not believe he was violating its laws. On the other side, it is urged for the defendant that it is just as reasonable to believe that the object of these circumstances called suspicious, was simply to deceive the Spanish authorities and Spanish agents hereabouts. You must say whether this position of the defendant is a reasonable one or is not. The Government further points, in this respect, with a view of showing knowledge in the defendant of the character of this expedition, to the fact that the defendant had intimate relations, if the testimony is believed, with the men comprising the expedition; that he forwarded most of them from Atlantic City to the point of embarkation; that he knew who were going, those with military titles as those without; that he knew arms and other war material were to be taken on with the men, and must have understood the character of the expedition. If he sent the vessel, the "Laurada," to the point off Barnegat, the inference would seem to be entirely reasonable that he understood at that time that she was to take these men, because if the testimony is believed he sent the men there, the principal part of them, and that he knew that she was to take the military stores, because the vessel took them as if she had previous orders. The vessel was not surprised in finding, so far as appears, that military stores were to be taken; they were taken as matter of course, just as the men were. You have heard and must consider the answer the defendant's counsel have presented to this contention of the Government's that the defendant, Hart, had knowledge when the "Laurada" went

out from here of the character of this expedition; and from all the evidence bearing on the question, you must determine whether it is proved that the defendant here furnished the means of transportation for the expedition, with knowledge at the time that the expedition was military, as heretofore described. If he did not, he is not guilty. If he did, he is guilty.

In conclusion, I repeat, if the expedition was a military one, as charged, and the defendant here in Philadelphia provided the means for its transportation, with knowledge that it was a military expedition, he is guilty; otherwise he is not.

He is entitled to the benefit of any reasonable doubt that may exist, on a careful and impartial examination of the evidence. If your minds are not fully convinced of his guilt he must be acquitted. On the other hand, if your minds are so convinced, he must be convicted. No suggestions of prejudice against, or sympathy for him, can be allowed to influence your verdict. Your duty and the public interests, as well as the defendant's rights, require that the case shall be decided exclusively on the testimony you have heard here.

I repeat, this case has been tried with a great deal of care, most ably, as I think, by the counsel on both sides, with such a degree of good temper as is best calculated to reach a just result; and it is with you to determine how it shall be decided. I suppose a citizen is never called to the discharge of a higher duty than that of assisting in the administration of justice as jurors. To listen to anything else than the evidence heard from the witness stand, the arguments of counsel and the charge of the court, you would fail in discharging this important duty, and show yourselves unworthy of the confidence reposed in you. I want you to be thoroughly impressed with the importance of the case and to the importance of deciding it according to your best judgments as applied to the evidence. All parties must be satisfied with such a result.

My attention is called to the fact that I used the term "preponderance" in speaking of the evidence, in one instance. If I did, it was a lapse of the tongue; I did not mean to use that word in speaking of the measure of evidence necessary to convict. Of course, as I said to you over and over again, in answer to the defendant's points, as well as otherwise, to convict the defendant the evidence must be entirely clear; it must be so clear as to leave no room for reasonable doubt. In other words, it must convince your minds entirely and fully. I am sure you understood me fully, and I call you back only to avoid the possible danger of some dispute hereafter.

Defendant's counsel excepted to the refusal of the learned judge to unqualifiedly affirm the points presented by them; and also excepted to the answers of the learned judge to the points presented by them.

Defendant's counsel also excepted to the following portions of the charge of the learned judge:

"That the destination of the expedition was Cuba does not seem open to reasonable doubt.

"They came to the 'Laurada' in a body, apparently acting from a common impulse as by preconcert.

"On the way to Navassa they continued to work about this cargo, opening boxes, assorting ammunition and making sacks from canvas, brought for the purpose, as the witnesses described, under the orders of Capt. Sutro, who, the witnesses say, conferred with and received orders, or appeared to receive orders, from Gen. Roloff.

"If this latter statement, respecting the desertion of these men, or attempted desertion, hunting them up, bringing them out, and requiring them to go, is true (and you must judge whether it is or not), it shows that the men were not at that time, at all events, free agents, but were subject to orders which they could not disobey.

"If he provided means for their transportation to Navassa on their way to Cuba, made this provision here, in Pennsylvania, with knowledge of the character of the expedition and of its destination, he is guilty.

"After passing down the river 20 miles further, she anchored and awaited the arrival of small boats brought down from Camden, on an order given in Philadelphia.

"When she got there she took on a cargo, under circumstances which seem to leave no room for doubt that she expected it.

"The evidence if believed, and it is uncontradicted, shows that the defendant gave several orders respecting the vessel about this time when she came in before this trip, and when she was going out. Among these orders was one, if not both, respecting her clearance, that he directed supplies to be put on board, that he took part in employing her crew, and that while the order to overtake her down the Delaware with extra boats, was not signed by him, nor anybody else, the tugboat man, Smith, usually employed by the John D. Hart Company, who had taken the 'Laurada' out and turned her down the river that day, to whom this order for extra boats was delivered unsigned, executed it.

"If he sent the vessel, the 'Laurada,' to the point off Barnegat, the inference would seem to be entirely reasonable that he understood at that time that she was to take these men, because if the testimony is believed he sent the men there, the principal part of them, and that he knew that she was to take the military stores, because the vessel took them as if she had previous orders. The vessel was not surprised in finding, so far as appears, that military stores were to be taken, they were taken as matter of course, just as the men were."

And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court;

and, inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute, in such case made and provided, this eighth day of March, A. D. 1897.

(Signed) WM. BUTLER, D. J. (SEAL.)

ARGUMENTS OF HONORABLE JAMES M. BECK.

Gentlemen of the jury—

It will not be my fault, if I do not, in deference to the suggestion of counsel for the defense, fully argue and discuss the case in my opening speech. It is perhaps desirable that I should say at the commencement, to excuse any seeming omission to cover any detail of the case, that I had not expected to make this opening speech to the jury. This honorable duty had been assigned to my assistant, Mr. Kane, who I think would have fully justified the suggestion of his honor that he would have made an effective speech, and I therefore naturally regret that it is not to be his honor and privilege to address the jury. With that apology for any omission or inaccuracy in the discussion of a trial that has lasted so long, I will proceed to argue the case as best I can. I take this opportunity, before passing on, to thank you very much for the patient attention you have given to it. I think that expression of appreciation is due not only from the counsel for the Government, but from the counsel for the defense. You have listened with exceptional patience, and I am sure that both sides will be entirely satisfied with whatever the twelve good men and true in this jury box shall determine to be a rightful verdict.

I will commence by discussing the nature of the defense. It is remarkable in this that there has been no testimony offered by the defendant to negative or deny the damning facts that have been adduced by the Government. The only evidence offered attacks the credibility of Government's witnesses. I am perfectly willing, for the sake of argument, that the testimony of those who have been under fire shall be eliminated from your consideration.

Mr. LEWIS. I except.

The COURT. You can except to it, but the court does not interfere.

Mr. LEWIS. I object to the remarks of the District Attorney and move for an exception to his remarks. I do not care to name them.

Mr. BECK (to the court). I said the defendant had offered no testimony to——

Mr. LEWIS (interrupting). That was the point, the fact that the defendant had offered no testimony.

The DISTRICT ATTORNEY (continuing to the court). No testimony to negative the facts adduced by the Government. I was about to explain what I meant by that.

The COURT. That is your view of the testimony, that is all. The court cannot sustain an exception to that.

Mr. BECK. I say the defendant has offered no evidence whatever to negative the *facts* adduced by the Government. All the defense has done has been to throw mud at one or two of the witnesses who have been called by the Government. Had the testimony which those witnesses gave from that witness box been challenged as to its truth, it might well be that in such an event that which they have offered to attack the credibility of Cowley, Sooy and Horton might cause a doubt in your minds as to whether the facts to which they testified were in point of fact true. But eliminate entirely that which they have stated, which is the utmost that they could ask, there is then nothing to attack the evidence of the other witnesses, who are entirely uncontradicted, whose credibility is in no way questioned, and whose evidence is clear, affirmative and positive as to the facts of this case. Where is there any contradiction in the testimony offered by the defendant of these facts? First, that John D. Hart, was the president of a company called the J. D. Hart Company. Of course it is needless to say that whether this be a corporation or a partnership, he cannot shelter himself from the consequences of his criminal acts because he is merely the president. No man can form a corporation, become the president, and then say "it is the act of the corporation that cannot be put in prison, and not my act." In other words, if a corporation enters upon an illegal or nefarious course of conduct, the man who is active and instrumental in it is criminally liable, and cannot shelter himself behind an artificial body. Therefore, I say that if the Hart line, the J. D. Hart Company, whatever it is and whoever compose it, was engaged for consideration of money in violating the neutrality laws of our country, it does not in any way excuse the act of its president, especially where, as here, he is proved to have been an active and direct participant in, as in this case, that which the unlawful acts of the company did. Where is there contradiction of the second fact, that being the president of the J. D. Hart Company, he operates a line of steamers between this and certain West Indian ports, and that if he or if the company be not the owner of the "Laurada," yet at the time of this particular voyage the "Laurada" was under his and the Company's control just as though he were the owner of the vessel and controlled its movement?

The COURT. Is the charter here?

Mr. BECK. No, sir. There is nothing to show whether it is a corporation or a partnership.

The COURT. No, the charter of the ship?

Mr. BECK. No, sir. The testimony connects Mr. Hart with that steamer from the very inception of the enterprise. The very first day's testimony may have mystified you perhaps as to its purport. Let me remind you, then, that the "Laurada" on the 27th or 28th day of July reached the port of Philadelphia from the port of Port Antonio. To whom was the cargo of that ship consigned? J. D. Hart. Who had charge of that vessel upon its arrival? J. D. Hart. Who had supplies put on that vessel, far in excess of those needed for the crew it was to carry? J. D. Hart. Who had coal put upon that vessel, not for an ordinary commercial voyage to Port Antonio and back, but far in excess of that required for any legitimate trip? J. D. Hart. Who employed the seamen that went upon the "Laurada?" Again J. D. Hart. Who on the day that this vessel sailed was engaged in giving directions as to the putting of the supplies, the coal and the provisions upon that steamer? J. D. Hart. Who gave directions a few days previous to the custom house broker to clear the vessel, not for Port Antonio, but for Wilmington, under the pretence that its bottom needed to be scraped? Again it was J. D. Hart that told Vandiver to go there. Vandiver, the custom house broker, as Burns said, made some pretence for the vessel's going coastwise to Wilmington, that its bottom needed scraping. So again, J. D. Hart is connected with the papers filed in accordance with the customs regulations, which in this case were defeated by pretence and deceit on his part. Moreover, when the vessel left Philadelphia on August 5th, had she intended to proceed straight to Port Antonio, had there been no intention at the time she lay in the Delaware river to go upon this filibustering expedition, it could not then have been anticipated that that vessel would have been off the Jersey coast on the following Sunday, four days following. It reached the Capes in one day, and if it had been the intention when she left Philadelphia to proceed southward to Port Antonio she would have been hundreds of miles to the south by that time. But on the contrary, let me remind you, that Rand said that Murphy told him on board the "Laurada" as they were in Delaware bay on that Wednesday, that on the following Sunday they would see Hart on board the "Laurada." As a matter of fact he did not come off on the "Fox" as Murphy had evidently anticipated. Let me remind you moreover that on Saturday night J. D. Hart, the charterer of the vessel, who, if he did not know the exact purpose to which that vessel was to have been put, would have thought of course that the vessel was hundreds of miles south of the Capes—was at Atlantic City, and that he directed the putting on board of the very men who com-

posed the military expedition. He went in the afternoon, as we learn from the testimony of Horton, to Burch, saying "That is the boat we want." We see him a little later meeting Sooy at the Inlet, being introduced by Merrer, and telling Sooy that he wanted him to be a pilot and take the boat to a point off Barnegat, and when Sooy asked him whether they have a boat, Hart said "I have a boat," showing that at that time Burch had contracted with the captain of the "Fox" for that boat and the arrangement had been completed through Burch. When thereupon Sooy asked what he was to get, Hart said that money did not matter, and that he would be well paid, if he would keep his mouth shut. We again see Hart that evening, as by prearrangement he met Mr. Sooy. We have him going to and fro, until the arrival of a train at the Pennsylvania Depot. We have him at the Pennsylvania Depot when seventeen Cubans and one negro come there. We have him ordering the men into the omnibuses. We have the stages moving off with Hart upon one of them. We have them going in one direction at Atlantic City, then being told by some mysterious stranger that the boat lay off Gardiner's Ditch. We then have the buses turned around and going down towards Gardiner's Ditch. At what hour? An hour when a proper pleasure party would have taken place? No. Under the cover of the night, to defeat the neutrality laws of the United States. We then have Hart standing upon the wharf and saying to these men when they were aboard the "Fox," "Cast off the lines, go to sea, you know the rest." What was that "rest?" It is as clear as the sun at noonday that it was to meet the "Laurada" off Barnegat and to transport this expedition to the island of Cuba. We therefore have John D. Hart up to the very moment that that naptha launch with that military expedition left the Jersey coast to be put upon the "Laurada," participating in this illegal trip. Lastly, when the "Laurada," having done its work, and transferred its cargo, coal, and expedition, to the "Dauntless" in these two trips, then proceeds to Port Antonio without any cargo whatever, and then returns to Philadelphia, we again see that John D. Hart is the real charterer of that vessel, because it is Hart that gives the power of attorney to Jordon, his bookkeeper, to go down to Wilmington, to enter the ship and to have the cargo discharged. Nay, the very bananas that he brought from Port Antonio, and which were too trifling to justify the expense of the trip, while they were consigned to Laselle & Co., were sold by auctioneers——

Mr. LEWIS. There is not a line of evidence that the expense of the bananas did not justify the trip.

Mr. BECK. There were 12,000 bunches of bananas. These 12,000 bunches of bananas are sold by the auctioneers, Weinert & Co., and the proceeds, after paying lighterage from Wilmington to Philadelphia, are paid to the J. D. Hart Company by the

auctioneers. Therefore is it possible for you to ignore this fact, which is as clear as any fact ever established in a court of justice, that whatever was done on that voyage was done with the knowledge of J. D. Hart, that he controlled the vessel, that he had the power to control its movements, that he knew before it left the Delaware the very purpose for which it was about to embark. Is not the inference clear that he knew the purpose of the voyage when in the Delaware Murphy and Rand in the cabin traced out upon the map the meeting place? As you will remember, Rand mentioned the very point ten miles east of Barnegat where she was to meet the "Fox." Hart knew at that time of the projected voyage, because his was the control of the vessel and he was as much in charge and as much responsible for its movements as though he were the owner of the vessel itself. Now, that being so, there must follow the legitimate conclusion, in the absence of some defense by witnesses called by the defendant, that the vessel left Philadelphia for the specific purpose of doing that which she did. I do not know to what extent my learned friends, who represent the defendant, will argue to you that this was a proper commercial voyage. If it was a proper commercial voyage all its conduct would have been entirely different. Unquestionably, a ship can carry a cargo of arms and ammunition without exposing its owner or its captain to any conviction for violation of the neutrality laws. Unquestionably, a ship can carry men as passengers, even though those men after they leave the ship, in the course of an ordinary commercial voyage, may have the ulterior intention of enlisting in some foreign army. The most familiar instance of that was the "City of Paris," or the steamer "Lafayette," I think it was, which during the Franco-German war took passengers, who desired to cross the ocean, just as the "Umbria" would take you and me across the ocean, and also took as part of its cargo arms and ammunition. There was no combination between the passengers. They came on board separately, just in the same way that you or I would go on board if we were commencing a pleasure trip to Europe, and the cargo was duly manifested; it was duly put into the ship, all customs laws were complied with, and it crossed the ocean as a perfectly proper commercial venture. The mere fact that that cargo was for the use of the French Government—was to be sold, I mean, as a commercial enterprise to the French Government, or that patriotic Frenchmen were leaving America for the purpose of going to France to enlist in the armies of their former country, did not make that a military expedition. But when men combine for the purpose, when there is a concert of action, when they go with arms and ammunition over which they have control, then it becomes a military expedition; and, as I said to you in opening, it does not matter whether they had uniforms, or whether they were divided into infantry, cavalry, and artillery, or whether their

numbers be few or many, or whether they belong to any special regiment in the Cuban army. The main question is: Was it an expedition? What is an expedition? A combination of men. What is a military expedition? It is a combination of men who go to fight, to fight somebody somewhere. If twenty or thirty men take arms and ammunition and telescopes and go to some point where they can view a solar eclipse it is an astronomical expedition. Why? Because the intention is solely to view the solar eclipse. But when those same men go, not for the purpose of engaging in the researches of science, but for the purpose of fighting, whether the fighting be of the guerilla kind or that of legitimate warfare, it is a military expedition. Why, not long ago a trial took place in which the whole civilized world felt an interest. It was when Jamison—I have forgotten his soubriquet—with a company or squad of daring free-booters plunged into the Transvaal and was captured. That was a military expedition. They were not members of the regular army. They belonged to no army. They were not sent by the English Government. They were in a certain sense land pirates. They simply went there without the authority of their government or without any declaration of war to accomplish some war-like purpose, and therefore they constituted a military expedition. So if you believe that this combination of men had any control over that cargo and were going for the purpose of fighting in Cuba, then of necessity it is a military expedition, no matter how few they were in numbers, or how irregular their military organization was, or whether they belonged to any particular part of the Cuban army or not.

Now, what evidence is there that this was a military expedition? In the first place, you have the fact that it was, because of the irregular manner in which it was carried out. Here is an expedition that does not depart as an ordinary commercial venture, but under the cover of night. Nothing whatever was done in all this expedition that was not done just at the same time and in the same secret way as a burglar enters your house. In the first place, we have the "Laurada" making this ostensible voyage to Wilmington to throw the customs authorities off their guard, and then proceeding out to sea to await the coming of certain vessels. At night an expedition leaves in the "Richard K. Fox" by prearrangement, and is perfectly obvious that Hart and Nunez were both there by prearrangement, and we have on that same night by the same coincidence a tugboat in New York City towing a lighter loaded down with arms and ammunition that are suitable for a military purpose, and in such quantities as could only be used for military purposes, and the conspiracy is so well timed that tug, lighter and naptha launch met just where they were intended to meet, ten miles off Barnegat, within the space of an hour. Tell me that that was an accident? Is there a man that could

possibly for one moment believe it was an accident? Why is there no witness called by the defendant to show that it was not by prearrangement that the "Laurada" left Philadelphia and lingered for three days off the Capes of the Delaware before proceeding southward, and then went northward to a point east of Barnegat? Why has not the defendant produced witnesses to show that it was merely an accident that the "Dolphin" and the "Green Point" left with this great cargo of arms and ammunition from the the port of New York? Why has not the defendant called witnesses to show that it was only an accident that the "Richard K. Fox" was chartered by John D. Hart through John Burch and that it carried eighteen Cubans off from Atlantic City and proceeded to this meeting place upon the high seas? An accident? Why, it would be the most fatuous folly for anyone for one moment to say that that was an accident, that it was not prearranged by the parties in this country, and that the man who was the active manager of the whole illegal voyage was not the man who controlled the essential means by which that expedition was carried to Cuba—namely, the "Laurada" itself. Moreover, is there nothing in the testimony that shows from the cargo itself the military character of the voyage? If you have any doubt upon this point let me simply read you a statement of the innocent cargo that the "Laurada" carried down. Here it is: 2,100 Remington rifles; 250 Remington carbons; 250 Mauser rifles; a rapid-firing rifle; a repeating rifle, the witness stated; slings for carrying carbons over their shoulders on horseback or on foot; 700,000 cartridges; 50,000 more cartridges of a different calibre; 95,000 cartridges of another calibre; 10,000 cartridges of still another calibre; altogether, therefore, very nearly 900,000 cartridges; 2 Hotchkiss cannon, breech loaders, 3 inches in diameter at the muzzle; 500 rounds of cartridges for those cannon; 3,000 cartridges of 44 calibre; 10 pack saddles and harness for the cannon; 12 revolvers; 12 holster belts; 5 pounds glycerine; 200 burlap bags, &c., and so on. Now, if this was an ordinary commercial voyage let me ask, how was it that that cargo which cost $50,000 was bought and shipped in the peculiar way that it was? Mr. Bruff says that he sold it to Mr. Espin. How was it paid? Was it paid by checks, as $50,000 would ordinarily be paid, because that is a pretty large sum to pay in cash? No, it was paid in cash. Did you ever know in your experience as business men, unless there was something very extraordinary in the nature of the business, $50,000 to be paid by a man in New York to an established business house in cash? Who the man was that bought it we do not know, but we know that it was bought at different times, but the direction was that it was to be taken on Saturday to pier 39, East river. In the meantime who is it that goes to the "Dolphin" and tells the owners of the "Dolphin" to meet the lighter "Green Point"

at 39 East River? Is it a man who enters the office of the "Dolphin" and says "I want to have the use of your tugboat?" "Who are you?" "I am Mr. so and so." "Very well, we are glad to rent out our tugboat. We will put you down in our books and send you a bill. Who are you? If you want to be out all night it will cost some money. It will take seven or eight men to go with the tugboat and lighter. To whom am I to look for payment?" Oh, no. The man that comes to McAlister in New York is "cash." Mr. McAlister absolutely tried to say this to the jury, and you must always remember that the witnesses for the Government were in many cases unwilling witnesses, and to get their testimony was very like drawing teeth—we had to go into the camp of the enemy. I say, having done that, Mr. McAlister tried to pretend he did not know that "cash" was simply a subterfuge and was given because no name dared to be given in that piece of work. You know perfectly well, as business men—it does not require argument—if he had not known that business was illegal he never would have rented out the "Dolphin" not only once but twice to a perfectly irresponsible stranger, whom he had never met before the first time he hired them, who refused to give a name, who did not give an address. Positively if Mr. Cash had not appeared upon the scene and paid the bill after the tugboat and lighter had been first rented McAlister would not have known where to send the bill. Now, McAlister knew perfectly well that Cash was given as the name because in this attempt to violate the laws of your country and my country—not the laws of Cuba, the laws of your country—that no man dared to leave one single trace of his movements. Therefore Mr. Cash hires the "Dolphin" and Mr. Cash engages a lighter, and then at night this warlike cargo is put upon that lighter. Moreover, a singular thing happens. Instead of the captain of the "Dolphin" having his own pilot, a mysterious pilot whom he had never seen before and has never seen since and whose name was not given, comes on board with Mr. McAlister, and Mr. McAlister introduces the pilot to the captain of the "Dolphin" and says: "This is the pilot. You will obey his orders," or words to that effect. Although the captain of the "Dolphin" was himself a licensed pilot and although the crew of that ship was in his keeping and its loss would be chargeable to him, he permits this mysterious pilot, whom he does not know was even licensed, to run that ship. Why? Because the captain of the "Dolphin" did not want to know the purpose of that trip. McAlister did not want to know the man that hired the "Dolphin." McKeegan did not want to know anything about it. All they knew was they were to go down the bay. They were not even told the purpose of the trip. If you believe them they were not told how long they would be out, except it was to go down the bay, and instead of going down the bay it was far down the Jersey coast off

Barnegat that that mysterious pilot takes that ship to meet upon the high seas the "Laurada" and the "Richard K. Fox," at a given time and on a given day. Is it possible that that was a legitimate commercial venture and that the men who were responsible for it did not know that they were violating the laws of this country? You must apply to this matter the same common sense that you would apply to any matter. That is all I ask. If, for instance, in the dead of night you were to see three men about to break into the window of a banking house, and they should be arrested, and should then explain their action by saying that they were there to see the character of the masonry, or any other pretext, would there be a single juror who would not say "No, gentlemen. Having been found at 12 o'clock at night breaking in the side door of a bank we do not have to wait until you are actually in the bank and blow open the safe. We know that no honest man goes into a bank in that way and at that hour of the night." I think it is said somewhere in the scriptures, that "he that entereth not by the door into the sheepfold, but climbeth up some other way, the same is a thief and a robber." That is the common sense of scripture. The common seuse of scripture is still the common sense of the nineteenth century. We are not obliged to show men's intentions by confession or by proving that they actually did them, because we never could arrest men until they had consummated the crime. We are entitled to judge of men's intentions by surrounding circumstances, and when they are such as to negative an innocent intent, then you are justified, nay, the conclusion is irresistible, that the intent is illegal, and is that which the nature of the act clearly indicates it to be.

It would be impossible to detect crime if you were not entitled to adopt that common sense conclusion. Let me add a little to the analogy. Suppose in addition to finding these three men breaking into that bank, they had bags with them, in which were "jimmies" and other usual implements of the robber and the burglar. Would you not say that the fact that they had in their possession the means whereby to break open the safe, would justify you, if any doubt there were, in convicting them? Why, of course you would. No twelve men could be found from the Atlantic to the Pacific who would not. Here is a body of men, which, like a thief in the night, carries on an expedition, because they do not dare to do it in the light of day. The "Laurada" sails, it is true, by day, but she allows three or four days to pass to escape the vigilance of revenue cutters, and to throw the Government off its guard, but the midnight expedition from Atlantic City, the night expedition from New York, the prearrangement to meet where the probabilities were no human eye would see them, are analogous to the thief breaking into the bank under cover of the night and because he does not dare to permit his acts to be seen by the light of day, and

the analogy to the tools found in the bag of the burglar is simply this, that while we have not got any jimmies or other tools that are appropriate to a burglar we have the precise tools and implements that are appropriate to a military expedition. We have the very things that you would expect on a military expedition, the Remington rifles, cannon, revolvers, cartridges for the cannon, flags, holsters for the saddles, sacks in which to carry them, and the various other articles upon which I need not enter in detail. So if there were nothing more in this case than the fact that this expedition departed in the way it did, and the cargo it carried and the control of that cargo by the crew, in the absence of any explanation by witnesses called by the defendant, the conclusion would be irresistible that the purpose of the trip was what it plainly imported, namely, to violate the neutrality laws of our country. But is there not more than that? What have we shown in addition? We have shown the appropriate characteristics of a military expedition. We have shown, in the first place, that there was somebody in command. Now, if those eighteen or nineteen people were simply passengers, as they were in the case of the "Lafayette," which I instanced a few moments ago, in such case of course no man would have control over another. If I go on a pleasure trip to Europe, for example, and I choose, when the ship reaches Liverpool, to remain on board, the only party that would have any control over me would be the captain of the ship. Certainly no fellow passenger could restrict the liberty of my movements or in any way restrict my right to stay on that boat or disembark where and when I pleased. But what have we here as showing that those men were not traveling separately and independently as passengers but for the purpose of being and continuing to be a combination of men for a warlike purpose? In the first place, we have the fact that they all came on together. Here were the buses in Atlantic City. We do not know how they got to Atlantic City, except the inference that arises from the fact that they were met at the Pennsylvania railroad depot. That inference is for you. Next we have them getting in three buses. We have the fact that they proceeded as a body to the point at Gardiner's Ditch. Unless those eighteen men had a concerted purpose to go to Cuba at that time I would like to know how they ever expected to get there by way of Gardiner's Ditch, unless they had been told that fact. Gardiner's Ditch is not an appropriate port of departure for Jamaica or Cuba. Gardiner's Ditch is not a port of departure or any port at all. Gardiner's Ditch is chiefly famous in this case because I think it will be the place where the defendant will be ditched, because that is where he was traced up to the last hour of this expedition. I say therefore, if you were going to Cuba you would not go down to Gardiner's Ditch and wait for a vessel to come along. And if you had such a purpose as that it would justify a

writ of lunacy. You would not want to go to Cuba by way of a naptha launch, because a naptha launch can carry neither provisions nor fuel sufficient to take it to Cuba. Therefore, when those eighteen men reached Gardiner's Ditch and as a body go on the "Fox" and thereupon Mr. Hart says "Throw off the lines, push out to sea, you know the rest," common sense justifies but one inference, and that is that they came there for the preconcerted purpose of getting out of this country without detection, and of going to Cuba by way of the "Laurada." That is the first circumstance that shows it is a military expedition. The second is the fact that they acted under orders. As I have said, if they were separate passengers there could not be any directions given by one to the other. But here is a case where these passengers are all under the control of a Captain, or in Spanish, "El Capitan." It is Captain Sutro who controls these men precisely as in a state of war. He says to this man "Go there," and he goes. Moreover, what does the Captain say? Does he put these eighteen or twenty passengers at work on that which is not warlike in its purpose? No, he tells the eighteen men to transfer the cargo of the "Green Point" to the "Laurada" and when the "Laurada" has gotten out to sea he tells them to take out the boxes and open them, and take out some of the arms and ammunition, to make sacks with belts that would pass over the shoulder. Why was that? Obviously because they knew they were to land upon some desolate point in the island of Cuba, and that they would have miles to march, perhaps, before they would join the main body of the Cuban army. Therefore, they had to carry this cargo of arms and ammunition, and the sacks are constructed on the entire downward voyage by the men for the obvious purpose of carrying the arms and ammunition with them when they reached Cuba and had to go overland to their destination. Moreover, what other point have we? We have the fact that Captain Sutro acts under still other and higher authority. Who is that? Major General Roloff. Who is Major General Roloff? We called the Cuban delegate, the highest man in the authority of the Provisional Republic of Cuba to that stand, and we ask him, "Who is General Roloff?" And he said, "He is Secretary of War of the Republic of Cuba." I asked him "Who is Colonel Nunez?" "He is a colonel in the Cuban army." Col. Nunez, you remember, was on the "Fox." Later on he met them off the island of Navassa, and it is Major General Roloff, Secretary of War, who sends one of the seamen to Sutro to tell him to come there, and Sutro comes to Roloff, who for the time being, we will suppose, drops his novel, and thereupon Roloff reads a paper, and tells Sutro something in Spanish, and then Sutro leaves, and they go and open boxes and take out one of the cartridges for those Hotchkiss cannon, and they bring it to Roloff, and Roloff being a veteran, because Palma said he had been in another war, then examined the cartridges, makes whatever comment he

desires, gives Sutro some direction, Sutro takes it back and puts the cartridge back into the box. Major General Roloff on another occasion sends for Sutro, because it would not comport with the dignity of a Major General and Secretary of War to give immediate directions to eighteen or twenty men. I do not say that in any way sneeringly, because that is an obvious fact. Roloff thereupon tells Sutro to go over all these arms and ammunition cases, and the work of taking it out of the boxes, assorting it and changing it to places on the upper decks, where it could be conveniently unloaded, is undergone under Captain Sutro's direction.

Adjourned until 2 P. M.

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2 P. M.

Mr. Beck. Gentlemen of the jury, at the adjournment of the court I was commenting upon some of the many facts from which the inference seems, at least to me, to be irresistible that this body of men who boarded the "Laurada" on the high seas constituted a military expedition, were acting under the orders of a commander, and that therefore it was not the case of mere passengers in course of transit for any ulterior purpose of enlistment. In opening the case this morning there was one very essential detail to which I did not allude, being unexpectedly called upon to open the case for the Government, and it is perhaps the most significant detail of the whole case. In a filibustering expedition it is obvious that there are certain things that must be done, and it is certainly a fact of great persuasiveness in this case that no omissions of those essential details were made. The most essential is the use of the yawl boats. If the steamer is to take a military expedition it must necessarily have extra boats. It cannot use the boats upon the davits to land the men and the cargo, because otherwise the ship would have to go to its first port, whether that were an outward port or a home port, without its boats upon the davits, and that would be difficult to explain, and beyond that, if the ship should encounter a terrific storm the lives of the regular crew would be in danger for want of such boats. Therefore a filibustering expedition must take along large boats that are suitable for landing through the surf, because a filibustering expedition does not go into a regular port of entry and land its cargo of men and ammunition upon a dock. The ship of course remains out at sea. The men and arms are put in those large boats that are suitable to cross the breakers, and are thereby transferred ashore, and the purpose of the yawl boats is of course to obviate the necessity of any of the men returning with the yawl boats to the steamer and remaining there, so that all the expedition will get on shore. Now, it is a fact that most directly connects this defendant with this voyage and shows that this purpose of violating the neutrality laws of our country was conceived and commenced here in Philadelphia and within the

jurisdiction of this court, that the yawl boats, without which it would have been almost impossible to have landed this military expedition, were procured here, and were procured, it is fair to infer, through the instrumentality of John D. Hart. What is the testimony upon that point? Here again we find one of these mysterious strangers who will not give his name and will not transact his business, as honest men do when they are about to do that which is no violation of law. We have James A. Smith, the proprietor of a tugboat, the "Madeira," putting provisions on board the "Laurada" and taking her to Greenwich to coal up. There is no harm in that, and nothing is to be imputed to Mr. Smith on that account. That would happen in the case of any steamer that is about to leave. My recollection of the testimony is that about 12 o'clock the work of provisioning was done, and the ship was towed or taken down with the "Madeira" to Greenwich piers, where a large amount of extra coal was put on, and that it was about two or three o'clock when she left there for Wilmington. Now, at four o'clock that afternoon, at least an hour, and perhaps longer after the "Laurada" had left Greenwich and started towards Wilmington, a message comes over the 'phone to James A. Smith, who finds it on his table, from no one apparently, addressed to no one apparently, but which message says that he, Smith, is to take his boat to South street, where he will meet two mysterious people; that then he is to proceed to Kaign's Point, where he is to get four large boats, which are to be towed to Wilmington or further down and put upon the "Laurada." Accordingly Smith, as Captain Knox says, went to the "Madeira," then to South street wharf, and there, by another one of these remarkable coincidences—remarkable if there was no prearrangement and perfectly natural if there were—the two mysterious strangers appear. Smith does not ask who they are that step on his tugboat. Captain Knox does not care to inquire who they are, but they step on board, and they thereupon proceed to Kaign's Point, where these men take four boats. They ask no one's permission. They do not make any purchase then and there. They simply take them from the wharf, presumably also by prearrangement, because apparently they were not committing larceny in broad daylight, and thereupon the tug tows these four boats down the river as far as Wilmington, where they do not find the "Laurada." Now, as showing that the officers of the "Laurada" knew perfectly well that those yawl boats were to come on board, we find from Rand that the directions were to stop the "Laurada" below Wilmington. Why below Wilmington? Because Wilmington was the last port of departure. There will be no customs inspection beyond that point. Beyond that their path is clear to the seas. Therefore, as you can of course see, if the yawl boats had been put on at Philadelphia they would have been found at Wilmington,

and the voyage would have been promptly stopped, and it was therefore absolutely essential that that vessel should have no yawl boats, cargo, or passengers beyond its crew when it reached Wilmington, because they feared just exactly what followed, examination on the part of the customs officers of that port. They thereupon reached Wilmington, and I want you to bear in mind what took place there. Earlier on that day a Mr. Neely goes down with the captain of the ship on the railroad and asks permission to clear that ship. She was not even in the collection district of Wilmington. How unnatural it was that the ship should be cleared for Wilmington to get her bottom scraped, and before she starts from Philadelphia application should be made by the captain of the ship at Wilmington to clear that vessel, before she had come in. When she did come in they came and asked for a clearance before they had made an entry. The collector said, "Why, you have not made an entry yet. We cannot grant you clearance." Then the entry was made and the clearance was granted, but before she was permitted to depart the collector sent someone on board the "Laurada" and examined her papers. It will be argued to you, probably at very great length, by Mr. Lewis, and I do not doubt that he will argue it with his customary ability, that all that we have proved might be consistent simply with an attempt to elude the vigilance of Spanish cruisers. I do not know how far that might help him, because that is exactly what a military expedition would seek to do, but he will build much upon the point that this may have been simply an attempt to smuggle goods that were contraband of war, and all that was done was done to elude the vigilance of Spanish cruisers, but we find from the very commencement of this trip that all that was done was to elude the vigilance of the officers of the United States. It was our laws that they were violating. It was the officers of our Government whom they were deceiving. Every piece of paper bearing the name of John D. Hart was nothing more than a lie to deceive the authorities of the United States as to the purpose of that voyage. Therefore, the yawl boats were not taken. They would not have dared to have had those yawl boats put on where they were at Dialogue's, which is right near Camden. To deceive the Government what do they do? They have this manifest, and I want to read it, because it is a most palpable lie. Listen to it. "Ten barrels of bottled beer, one safe, one case condensed milk, one kit mackeral, one-half barrel of flour, five packages of groceries." This is consistent with a coastwise clearance to Wilmington. It is not consistent with a voyage of a crew of twenty people to Port Antonio, Jamaica. Endorsed on it you will find an affidavit by the captain, sealed and sworn to, that that is a truthful manifest of the cargo of that vessel. Having passed Wilmington—staying, as Rand tells you, only half an hour,

just long enough to get her papers out—Murphy having gone down by train with Neely before the ship actually left Philadelphia, in order to get out of that collection district—they proceed southward to Delaware bay, and there they stop. For what purpose? To take on board these yawl boats. By daytime, when people could see them? Ah, no. Here again it was to be done like a thief under cover of the night. They do not dare, when people could see them, do anything in the course of this voyage, but they stop, drop anchor, wait, and at four o'clock Smith gets his message to leave. He commences to tow the yawl boats, and it is night when he reaches the "Laurada," and those yawl boats are put upon the steamer which immediately weighs anchor and proceeds upon her voyage. And where are the yawl boats put? On the deck, where you would expect them if the purpose were legitimate? Ah, no. They were put in the hold of the steamer, in the hatchways, and were covered with canvas, so that no one could see them. What are Rand's orders after he gets out? To keep out of the way, as Murphy said, of passing vessels so as not to be seen, and to kill time until he can reach Barnegat. Therefore you will see that these papers are not made to elude the vigilance of Spanish cruisers. They are papers to deceive the authorities of the United States, who, in the observance of good faith between nation and nation, were endavoring to enforce the neutrality laws of this country and not to make a mockery of them. I shall only allude to these papers for a moment. For instance, there is the application to unload the "Laurada" when she came in on July 27th. How is it signed? "John D. Hart," and at the bottom is his custom house broker, J. Frederick DeHart. There is the "Laurada" with the flag of the Hart line, a red heart upon a white flag. That is its flag. Look at the next paper and what do you find there? Shipping manifest, steamer "Laurada," etc. That is August 1st. You will find on one of these manifests the shipper is John D. Hart, not even the John D. Hart Company, whereas on another it is the John D. Hart Company. "Manifest of a part of cargo shipped by John D. Hart on board the 'Laurada' whereof Daniel Murphy is master." Then follows the same old recital of ten barrels of bottled beer, safe, can of condensed milk, etc. Therefore dismiss from your minds the idea that this was not an attempt to violate our laws but was an attempt to smuggle contraband goods into Cuba.

In all cases that are tried in court it is not only the testimony that is actually adduced upon the stand which is significant, but the witnesses who are within the power of the defendant to call and who are not called are in some degree important. Let me illustrate that fact by this case. The two witnesses, Sooy and Horton, have been under very considerable fire, and were their testimony contradicted, incredible or improbable, and if it were not corroborated by every other witness in the case, it may be that there

would have been some doubt cast upon their story. I do not think very much, because if ever a witness plainly perjured himself upon the stand it was Dr. Goldberg, who told the most improbable, incredible, monstrous story with which I think any of us who have heard cases in this court have ever been insulted. I cannot think for one moment you believe one word Goldberg said. To me that is so apparent that I will not even discuss his testimony. I rest it upon my cross-examination of him. But where there is no contradiction by witnesses whom it would have been within the power of the defendant to call, of the facts to which Horton and Sooy testified, then it becomes unimportant what their character was, because it does not follow because a man's character may not be of the best, that his story is untrue for that reason alone. What testimony was it within defendant's power to call to contradict what Horton and Sooy said? There was Rodman, who was in court, whom we pointed out as one of the men who was on the "Fox," and who was the second mate of the "Bermuda," if I recollect correctly. At all events he was in the employ of the Hart line. There was Colonel Nunez. There were others that were mentioned. The defendant could have called them all to have testified that it was not true that he was there, or that Horton and Sooy were there, but the defendant did not call one witness—did not call Rodman, who was an employee of his, who was right here in court, and whom you saw—did not call Col. Nunez, and perhaps as to him there is some explanation, nor John Burch to say that John D. Hart was not present that night in Atlantic City. The testimony of the crew of the "Laurada," and the "Dolphin," shows that that naphtha launch, the "Richard K. Fox," did put off from Atlantic City, just as Horton and Sooy said? Did Captain Anderson deny, and he was not a willing witness, that Sooy was the pilot on that boat? Did Rodman, who had the chart with Sooy and who Sooy said conducted with him that vessel to Barnegat bell buoy, deny that Sooy was on that vessel and did what Sooy had said? Where is there in this case a scintilla of testimony to contradict what Horton or Sooy said? I repeat again, if Sooy and Horton were contradicted, it might then be a matter of doubt in your minds, in view of what Goldberg and the other man said, whether you ought to convict a man upon their testimony, but when the defendant, with Rodman in his employ, and John Burch in court, with other witnesses whom he could have called in his own behalf, does not call one of them to deny what Horton and Sooy said, how can you then say that Horton and Sooy did not tell exactly the truth, especially when Horton and Sooy are corroborated by the surrounding facts of the case? It is fortunate for you in the discharge of your very heavy responsibility in this case that you have practically no contradictory testimony of any consequence to resolve. The testimony is perfectly clear and your

course is perfectly clear in the matter, if you will pardon me the suggestion. I say that for this reason. The testimony offered by the defense does not pretend to contradict anything that we allege as to the facts of the voyage. They have ventured to contradict as to collateral matters certain witnesses. They have thrown a cloud upon Cowley, I frankly admit it. They show that Cowley had been engaged as a boy in rock fighting. Possibly some of the rest of us have thrown stones in the exuberance of youth. That was dragged up against him. They have shown that he gave a policeman a good thrashing. Perhaps he did a very proper service when he did it, because sometimes policemen are so tyrannical with men of Cowley's race that we can understand that perhaps the policeman may have been to blame. The other witness whom they attacked is Greenwood. Greenwood they accused of having administered some poison to kill a clergyman. I will show you from their testimony that it is, as Greenwood said, not true. Do you suppose that any judge in the world, if he felt convinced that a man was guilty of attempting to murder by poison, an offense that is punishable by hanging under the statutes of Pennsylvania, would only have given him one year? That shows to me that they thought he either was a bad darkey, or else unpopular, or else belonged to a despised race that has very few friends. The punishment shows it as conclusively as if the judge were here to say it. But I say I am willing to give them the benefit of that doubt. Eliminate Mr. Greenwood also from the case. That is out of the case. You see I am generous with them. What else have they to fall back on? They have the fact that our other colored members of the crew received $15 a week for their expenses. What of that? It is shown that the American consul, when they got to Port Antonio, shipped them here, that the United States Government, they being men of the sea and liable to scatter to the four ends of the globe, as always is done in this class of cases, detained them here. Now, what should be done with them? Let them starve? Were they to be denied their subsistence? Were they not entitled to the wages which they lost while detained here? They received $18 as the wagesof seamen, but they received also their board and subsistence while sailing. Here they get $15 a week, for what? In lieu of their wages, in lieu of subsistence, and for traveling expenses. My learned friends brought out that each of them had to go to Jacksonville, buy their own tickets, and had spent in one single round trip ticket three weeks of the wages they had received. The United States Government in its attempt to honestly administer the neutrality laws is charged with bribing its own witnesses. I do not know whether my learned friends think I have been bribing these witnesses. I am sure I would not want to prosecute myself, because the double role would not be pleasant and would certainly be embarrassing. The

witnesses are here, they have been paid, and if they have to be detained for any further purpose they will be paid again. I am sure the good sense of the jury will acquit the Government and its officers of any attempt to bribe witnesses by giving them the means, without which they might have starved. But let us eliminate all those witnesses. Now, certainly that is generous. You still have witnesses who are uncontradicted, and are not paid one cent, who have come here most unwillingly, and who have proved facts from which, uncontradicted, there can be no conclusion but guilt. Whom have you? For instance, you have Lieutenant Rand. Now, pardon me just a few moments, and favor me kindly with your close attention, while I allude to Rand. There was a man who was not a poor colored sailor, and did not get $15 a week, and had had no quarrel with Captain Hart. He came most unwillingly. Against him it was impossible with all their ingenuity to suggest one single whisper of suspicion or unfairness. It was obvious he did not care to testify, but he had taken his oath before Almighty God that he would tell the truth, and he proceeded to tell it, and if there were no other witness in this case the testimony of Rand, uncontradicted, would be sufficient to justify a verdict of guilty at your hands. Rand tells you the facts from Alpha to Omega, from A to Z. He shows you how in Philadelphia, in the chart room, before she sailed, the whole thing was prearranged. He tells you how coal was put on board in excess of the usual quantity. He shows you how the ship had more provisions than were needed for its crew. He shows you how they never intended to stop at Wilmington, although they deceived the authorities of the Government. He shows you how they waited below Wilmington for the yawlboats by prearrangement. He shows you how they killed three days out at sea to elude the vigilance of Government officers. He told you how they met off Barnegat the "Fox," the "Dolphin," and the "Green Point" on the high seas. He told you who came on board, corroborating these poor colored men who have been the targets, at which the mud of the defense has been thrown, in every detail and leaving their stories unimpeached and unimpeachable. He tells you about the cargo of ammunition. He tells you about the men. He knows who they were—General Roloff, Colonel Nunez, Captain Sutro, Ricardo the pilot. That is a point as essential as the yawl boats, because they could not get a pilot in Cuban waters in the ordinary course. Every filibustering expedition must take not merely its yawlboats but its Cuban pilot aboard from America, and we find here the pilot. He tells you, moreover, that Roloff told him that those stowaways had been paid $5 a week until they shipped; that they had been begging for the opportunity to go and fight, and had volunteered their services; that at their earnest request he had taken them along on this expedition, and that when they reached Cuba

their courage had failed them and these stowaways had secreted themselves. If they had been mere passengers, what right had Roloff to drag those two boys, 18 and 19 years of age, out of that hold to expose them to the red hell of modern battle? What excuse had he? None, unless this was a military expedition. If that were a legitimate voyage I would like to know what right Roloff had to say "Haul up those men." I do not doubt that Major General Roloff, secretary of war, would have been very glad to have left them there, because I do not suppose he had any use for cowards, but the significant fact is that if those two men had remained on board, when they got in Port Antonio and the consular officers had looked up the ship's crew, they would have said "Here are two extra men. What are they doing here?" Those two men would have told the story and the game would have been up. Can you not see therefore it was vital to take those two men out of the hold and put them where their mouths would be shut, and God only knows whether they are not to-day prostrate on the earth with bullets through their hearts and their blood staining the soil. Dragged to Cuba against their will by the mere force of military discipline. I do not criticize it in any way. If there were no other fact in this case to show a military expedition you have it indubitable, convincing, damning, that this was a military expedition, because Roloff exercised his prerogative as an officer of the army to drag those stowaways out of the hold and to compel them under the force of rifles to go upon that shore and fight, as they had originally promised to do.

What does Rand say as to the course they took to reach the island of Navassa? (Showing the jury a chart.) Navassa is right there, the island of Jamaica right here, and if this were an ordinary commercial voyage the course would have been right down here, right along through there, straight to Port Antonio. Now, this is the voyage they took. (Indicating a circuitous route around Hayti.) Why? To get out of the way of Spanish cruisers. You remember one of the witnesses said the pilot stated the very place they were going to land in Cuba. It was Santiago. Look right there and you will see Santiago, not a bee line from Navassa, but nevertheless pretty direct. I suppose about one hundred miles, if ninety miles is the nearest point, would be the distance to Santiago. Where is Havana? Away off there. As we all know, this end of the island is entirely under the control of the insurgents. Therefore, you have the testimony of Rand, Rand, uncontradicted, Rand unwilling, Rand against whose good name there is not a smirch, Rand, who is not getting a penny from the Government, Rand unimpeached and unimpeachable. You have testimony that they went around the island of Hayti to keep out of the way of steamers and because they were not due at Navassa until ten days after they left Barnegat, until the Friday following. They reached there Thursday night. Rand tells you,

it being twelve hours ahead of their meeting, they went out to sea and came back, an aimless thing unless the story is true. They came back and there they met the "Dauntless." Now, here is another significant point. What does an honest vessel do that goes upon the high seas? It has its name upon its stern. But here is a vessel that, like a pirate, conceals its name. Canvas covers it. Upon the buckets it is painted out. It is only when a man looks close he can see the white paint over the word "Dauntless." If all these colored men are but spies, bribed by the United States Government to persecute one of its own citizens, and that will be the doleful story you will hear from my learned friend, Mr. Lewis——

Mr. LEWIS. No, you won't.

Mr. BECK. If that were all true, could it be possible, if this thing did not take place, that these men could have identified somebody on the "Dauntless?" Of course, they could have said some one, but nobody who could be produced. But we bring here under a Government subpœna a man who was cook of the "Dauntless." I asked each of these witnesses whether that is the man. They say "Yes." Now, if Butler had gone on the stand and said "I never was on the 'Dauntless' in my life," it would have thrown a cloud upon their testimony. But Butler takes the stand, and says: "Yes, I was cook of the 'Dauntless.' That is absolutely true." He then started to suppress facts. I saw very plainly he was afraid to tell the story of that "Dauntless" expedition, and I gave him the privilege of asserting his Constitutional right not to incriminate himself, and he thereupon left the stand, but his statement that he was cook of the "Dauntless" corroborates each and every one of those witnesses of the "Laurada," who get the $15 a week, if you please, but whose truth is brought out as clear as day by the statement of Butler that he was the cook, and that those men who were strangers to him and could not have picked him out, if the affair did not take place precisely as they say it did. Therefore, eliminating, as I have said, Greenwood's and Cowley's testimony, Rand's story alone, corroborated by all the other witnesses whose names I will not take time to repeat, justifies, in the absence of any witnesses for the defense as to the substantial facts of the case, a verdict of guilty at your hands.

It therefore simply reduces itself, it seems to me, to a question whether you desire to escape from what may be a painful duty. I ought to say, because some point will be made as to the purpose of this expedition, that not merely does Rand testify as to admissions on the part of these conspirators, that they were going to Cuba to fight the Spaniards, but you will remember that every one of that crew tells you that the two men who stowed away, the pilot and Roloff, in talking of that outward trip—never expecting I suppose this matter would be ventilated in court—said positively that the

expedition was going to Cuba to fight the Spaniards. Moreover, as to the first voyage to Cuba, we had the testimony that they did get to Cuba, and had made a safe landing, and the Cuban pilot, you will remember, brought some of the beach grapes from the shore and made some allusion to it. Therefore, it seems to me your duty is plain and exceedingly simple. It is rare that in a case of this very great importance to the honor of the Government as well as to the majesty of the law, that testimony is so absolutely free from contradiction. I know Mr. Lewis may try to pick pin holes in some of the minor points. He will say one man said the "Fox" came up at ten o'clock and it did not come until 12, and that one said the launch was on the starboard side and the other on the larboard. There may be other little insignificant variances in details. Do you know those vouch the truth of a story, because it has often been said, and I venture again to repeat it, that one of the arguments of the sincerity of purpose of those who wrote the Gospels in the New Testament is the fact that there are slight variations in unimportant details. Of course, the argument is that if the story had proceeded from one mind and from one pen, there would have been no inconsistency in minor details. At all events—be that as it may, and it is a theological question—certain it is that one of the best evidences that witnesses intend to tell the truth is that when they are testifying to transactions that run over many days, and cover various details, they see it from different standpoints, and their memories are more or less inaccurate, and thus you may expect little variations in minor details, unless the witnesses have been coached to tell one story and one story alone. You have, with only slight variations as to minor details, a harmonious, consistent, probable story on the part of the Government. The testimony remains clear and uncontradicted that this ship left Philadelphia for the specific purpose of taking yawl boats in Delaware bay, and proceeding to sea and meeting a cargo and an armed expedition; that the cargo and the expedition were together; that the men on the expedition took the cargo out of the boxes and put it in proper shape for transportation over land; that they then proceeded to the island of Navassa; that they on two occasions transferred this cargo to the "Dauntless;" that the reason it took two voyages was because another ship, the "Three Friends," was expected, which would have obviated the second voyage. We have the evidence that this military expedition acted under the authority of a captain, and under the control of the Cuban secretary of war and a major general of the Cuban army. It leaves Navassa on the "Dauntless," proceeds to Cuba, lands at Santiago, and there presumably joins the main body of the Cuban army, because that is a matter which, in the absence of evidence to the contrary, must be inferred, precisely as in the analogous case that I cited before, you

would infer that the intention of burglars was to rob a bank when you found them breaking into it.

Now, in plain words, what are you going to do about it? The honor of your country is in your keeping. I repeat it with calm consideration, and weighing the words, the honor of your country is in your keeping. I will not pretend to discuss the political aspects of the question, because it is foreign to the present inquiry. It may be that it is the duty of the United States to recognize the Cubans as belligerents. It would make no difference so far as this question is concerned, because the neutrality laws would still remain the neutrality laws. Our Government owes to every power the enforcement of its obligation under international law that its soil shall not be used as a place for the formation of a military expedition to attack a friendly country. The only honest thing for us to do is either to enforce that law and respect our obligations or to frankly and openly declare war. It is not, however, Mr. Hart's prerogative to declare war, and yet that is practically what he has attempted to do. He has compromised our peaceful relations and subjected us to heavy claims for damages under the same rule of law that we laid down to the English Government in the matter of the Alabama claims. Above all things he has compromised the honor of the country, because if we have these laws upon our statute books and do not pretend to keep them in sincerity and good faith, we simply lie to other powers, and as a nation our faith is broken. How can these international obligations be enforced? It cannot be done by the executive except through the laws of the United States. The President cannot act arbitrarily. The Federal Government is one of delegated powers.

The COURT. I do not desire that there shall be any discussion of anything outside of this case. If you enlarge and get beyond the proper scope of discussion here, of course the other side will follow you.

Mr. LEWIS. He has done it already.

The COURT. Just to the extent he has done it you may follow him.

Mr. LEWIS. I intend to.

The COURT. I am not going to have any discussion here of any question that is not directly involved in the issue presented in this case. If this man is proved guilty of the offense charged in the indictment, then he may be convicted. If not, he cannot be convicted, and the jury will be confined by the Court, as counsel must be, to a consideration of that and that alone.

Mr. BECK. Nothing is further from my purpose than to discuss in any way the political situation. That which I desire to say to the jury, but which of course I will not say if your honor does not desire me to say it, is that the only way the Government can act is through the jury.

The COURT. The Government has not anything to do with it, except to prosecute this man on the charge of violating a statute, and if the Government has shown by satisfactory proof that he has violated it, then it is the duty of the jury to convict. If the Government has not shown that of course the jury must acquit. So that they cannot go beyond that. I know it is not unusual to enlarge, but it is probably always a mistake, and in a case of this character it is especially so, and I think it is right to interfere just as I am doing.

Mr. BECK. Very well, sir. Gentlemen of the jury, you are to say whether the laws of this country are to be observed. That is the plain question. It has sometimes been said, and I think truthfully that in our country it is not more law we want but a little more obedience to the law, especially on the part of many who make an asylum of this country and who violate our laws. Therefore I ask you, remembering that you have gone into that jury box to decide this case impartially upon the evidence as detailed from the witness stand and upon the law as interpreted by the court, simply to do your duty and find the fact as it is. Beyond that it is needless to say you have no further concern. You do not punish the defendant. The court in a certain way does not punish the defendant. It may proportion the amount of punishment in the event of a verdict of guilty. Your mission is simply to find facts. Therefore the only question that you can properly take with you under your oaths is whether the witnesses for the Government have plainly demonstrated that John D. Hart provided or prepared the means, little or great, by which a military expedition left this country, whose purpose was to make war upon a friendly power.

Monday, February 22, 1897, 11 A. M.

Present: James M. Beck, Esq., U. S. Attorney, and Francis Fisher Kane, Esq., Assistant U. S. Attorney, for the Government.

John F. Lewis, Esq., and W. W. Ker, Esq., for defendant.

At the conclusion of Mr. Lewis' argument Mr. Ker stated: I have an application to make to the court. On Saturday afternoon last a gentleman came to my office to see me, and I was absent.

Mr. BECK. I would like to know what you are going to say in the hearing of the jury.

The COURT. You had better inform the court privately.

Mr. KER. No, sir; it is a public application.

The COURT. Make it in writing.

Mr. KER. I do not know of any rule of this court that requires it to be made in writing. If your Honor says so, I will have to do it.

The COURT: The court informs you that at the present state of

the case any application of an extraordinary character must be made in writing.

Mr. Ker submitted in writing the following application to the court:

The defendant moves for leave to examine Henry Lecaste, as a witness for defendant, whose testimony is after discovered evidence, which came to the knowledge of counsel for defendant last Saturday, and after the evidence on both sides had been closed. The witness will testify to a conversation with and between the witness Horton and a detective, in which the detective bribed the witness Horton to appear and swear falsely against the defendant.

(Application objected to by Mr. Beck.)

The court directed the clerk to enter the application, and refused to allow it.

(Exception for defendant.)

(At 12.40 a recess was taken of one hour.)

Closing Argument of Honorable James M. Beck, United States Attorney.

With submission to your honor, gentlemen of the jury: It is my privilege and duty as prosecuting attorney for the Government to address one final word of argument to you before this very important case is committed to your decision.

I cannot refrain, in the first place, however, from complimenting my good friend and distinguished adversary, Mr. Lewis, upon the very able argument that he has made. He has fully justified by his speech, the honorable and conspicuous position that he holds in the junior bar of this city, and I think that you, as jurymen, could not regret having become participants in this important trial, if for no other reason than that you have been privileged to see how fine a speech, and ingenious an argument, can be constructed out of slight materials. It is true it has been said that bricks cannot be made without straw, and yet my learned friend, with no witnesses except those that threw mud and hurled abuse, and without being able to contradict the essential facts upon which the Government's allegation is based, has constructed an argument lasting nearly two hours, which if it did not wholly convince you, has yet not failed to entertain.

It would be, of course, impossible for me to discuss every point that he has made that was not anticipated in my first speech, and I shall only endeavor to answer his more important arguments. If I shall speak of any in a slighting way, I know you will acquit me of any intention to disparage the speech, because it seems to me Mr. Lewis has contradicted the old maxim of natural law, that from nothing nothing comes, because from a defense that was destitute

of facts something has come in the shape of a very entertaining and ingenious argument.

The first argument to which he called your attention was this: He asked in clamorous tones and with a look of indignation at me, as if I had been guilty of some unworthy act, why did I not call Bowen, Trench and the Burchers, and he has challenged me to give a reason, and I will give it.

Bowen and Trench were the police officer and the British collector of customs of Port Antonio, to which the ship went after leaving the island of Navassa. Therefore, the work was done, the crime, if any, had been accomplished, the goods had been taken off the "Laurada," the cargo had been transferred to the "Dauntless." Of what importance was it in the discussion or consideration of this case, what the "Laurada" did after she left the island of Navassa and proceeded without passengers or cargo to the British port, to which she had ostensibly cleared? My friend will argue, and did argue, that Bowen was not called, because he had come up in the same vessel as these colored seamen, but when he said that Jabez Bowen brought them up, he said which there is not a line of testimony to support, because all that was said was that Bowen came up as a witness in this case in the same steamer with these men; that disposes of the episode of the three rifles that were found in the vessel after the expedition had left Navassa and after the "Laurada" had reached Port Antonio, and it has no more bearing upon this case, in my judgment, than any other event to be chronicled in to-day's daily papers would have upon the substantial offense which we are trying.

As for the Burchers. Why did I not call them? Ah, no, Mr. Lewis, I will not walk into the parlor at the invitation of the spider. I did call one of the Burchers in regard to the yawlboats, and I am confident that he left the impression upon your minds that he did not dare tell the truth. It was John Burcher who was conspiring with John D. Hart at Atlantic City on that Saturday afternoon to charter the "Richard K. Fox" to take the expedition out to the "Laurada." Call John Burcher, a conspirator, as to any essential fact of the case, and run the risk of his testifying in his own relief and in protection of his own liberty? John Burcher was his witness, and although he was in court, the defendant did not dare to call him to deny what Horton had said that Hart had said to Burcher. I would have been false to my duty as a prosecuting officer if I had done anything else.

The next argument to which Mr. Lewis alluded, outside of the historical excursion on the subject of the revolutionary complications, upon which I shall not enter, was this, that there was no evidence that Hart procured the yawl boats. I do not assent to that proposition. I say that the man who provided the "Laurada" for this expedition presumably provided the yawl boats, and that Smith,

the proprietor of the "Madeira," who knew John D. Hart, and had business relations with him, and who on that day was taking out coal and provisions to the "Laurada," received a message which directed him to go, after the "Laurada" had sailed, to a certain point on the Jersey coast, get four yawl boats and tow them down the river. James A. Smith, unwilling witness that he was, knew perfectly well whence that message came, because when he made out his bill he sent it to John D. Hart, knowing that he knew about these yawl boats. When Smith went to Hart and presented the bill, Hart tore it up, saying that he knew nothing about it. Of course he did. Hart would not have a written receipt for the towage of those yawl boats in existence. This business was not done on paper. Even the $50,000 for the ammunition was paid in cash and no receipt taken. Therefore, Hart tore it up. But what followed? Smith never presented that bill or spoke of it to anyone else. He knew perfectly well the money would come. He did not say to Hart, "If you did not order me to tow these yawl boats who did?" He quietly waited, and then precisely in the same way as all of these attempts to violate our laws, a mysterious stranger came into Smith's office and put down the money and would not take a receipt, and would not say whence he came.

Can you doubt, when you view all the circumstances of the case, that John D. Hart, not daring to give a check, or pay the money, sent that man, who perhaps was John Burcher himself, to pay that money and leave no record whatever of that transaction?

The next argument is that there was no evidence who hired the "Dolphin." That is absolutely true. It does not follow, because John D. Hart is not connected with every part of this expedition, that he is not guilty. Such a contention is beyond the legitimate claim of the Government. This was, without exception, the most skilfully planned expedition, perhaps, that has left our shores. It was timed as by clock work and it required more than one conspirator. It required men in New York, in Georgia, from where the "Dauntless" went, and in Philadelphia. That John D. Hart was an active participant in all, goes without saying, because without the "Laurada" the expedition could not have been, but we do not contend that he was instrumental in paying the money or active in the accomplishment of every detail, but the moment, gentlemen, that you believe that there was a conspiracy to violate our Neutrality Laws, that moment the rule of law becomes unbending that every conspirator is criminally responsible for the act of every other conspirator, because they are treated as one man and the whole transaction is treated as one. Therefore, if John D. Hart was a participant in this conspiracy, the fact that he did not personally hire the "Dolphin" becomes unimportant, and in point of fact he would be criminally liable, if charged with that offense. However, he is not so charged.

The next point to which Mr. Lewis refers, and that after all was the burden of his argument, was this: I quote his words, "That it would be a travesty on justice to call this a military expedition." For that he gave a great many reasons that were spun out with the same minute detail with which a spider weaves its web. He gave so many reasons that it reminded me of an experience of my own. I remember once being very much aggrieved at the conclusion of one of the State courts that had summarily given judgment against my client out of court, and I went to a most distinguished member of the Philadelphia Bar, perhaps next to one its most distinguished member, and I said, "I have forty-five reasons to show that the court was in error." He said, "Mr. Beck, do not have forty-five reasons, or you may lose; have a few good reasons, and drop their multiplication." And I found out when I took that case to the Supreme Court that this advice was good.

And so with these eighteen or twenty fanciful reasons. Let us see to what they amount, and whether they are not an ingenious multiplication of sophistical arguments.

The first is this, that these men were on the launch, the "Fox," when they got alongside of the "Laurada," and the testimony is that some of the men waited until provisions were handed down. They had not had anything to eat all night and they had left Atlantic City Saturday night, had had no breakfast, and it was then 10 o'clock when they met the "Laurada." Because those men stayed on the "Fox" until provisions were handed down, and did not go upon the ship until the "Dolphin" and the lighter arrived, when there was something to do, an argument is urged that this is not a military expedition. If you can see the slightest significance in that incident, I fail to see it. They waited on the "Fox" as long as it pleased them. The time had not come for action. As we know, the crew on the "Laurada" were rigging up the necessary derricks and hoisting apparatus before the "Dolphin" and the lighter were in sight, and those men went on the "Laurada" when the time for action came, and not until then.

The second point was with regard to the manifests. Mr. Lewis argues that all the evidence of deceit and fraud upon the United States Government amounts to nothing, because, he says, that the purpose was to deceive the Spanish Government. I deny it. The purpose was to deceive the United States Government, and nothing but the United States Government.

Mr. Lewis has well said, and I want you to understand this because unless you understand a little maritime law, perhaps the point of the whole argument would escape you—Mr. Lewis said that there is no law against ships taking out a cargo of ammunition. Not at all. A man can go into the collector's office and file his manifests, as has been done repeatedly; there is no harm in that; and it can be shown that there is a passenger list, and there is no harm in that—the ship will be cleared.

It is said that they could not reach the island of Cuba if that were done. Not one single reason is given for that statement. These papers that are filed with the collector of the port are not made public. They are papers for the information of the executive officers of the Government. They are the private records of the collector of the port of Philadelphia, and there is nothing to show you at all that there is any access whatever given to them. If access had been given to those papers, and the "Laurada" had cleared and sailed, and word had been sent down to Havana that the ship had left Philadelphia with a cargo of men and ammunition on board, would that have enabled the Spanish Government to keep that vessel from landing on the Cuban coast? Not a bit of it. The moment the ship leaves the Capes it has the vast and almost immeasurable waste of waters before it. All the combined navies of the world could not patrol the Atlantic ocean or even the Cuban coast. I do not know whether you have an idea of the geographical length of Cuba, but it is such that if every war ship of every civilized country were united to patrol its coast to keep a vessel out, the ship might still slip in. Therefore, gentlemen, the idea that this deceit practiced on our Government officers was intended to throw the Spanish Government off its guard is absolutely unworthy of credence. What was its purpose? It was this: When the President of the United States, on the same day that the "Laurada" came into port, asked every citizen to help enforce the neutrality laws, and called upon every officer of the Government to use due diligence in their enforcement in accordance with our international obligations, it then became necessary to deceive our Government and its officers as to the purpose of that voyage, if it had an illegal purpose. If they had simply had a cargo of arms and ammunition, and nothing more, the ship could have cleared. If they had simply had passengers, the ship could have cleared. But they knew perfectly well that the moment that they took on a body of men, such as this was, and a cargo of ammunition, such as this was, the Government would have said "You cannot clear. We owe it to a friendly power not to allow our territory to be made the basis of hostile operations." Therefore, not to deceive the Spanish Government, but to deceive our Government and its officers, and for the purpose of violating its laws, all this deceit was practiced.

The next point related to the handling of the cargo, and was that all these men were taken simply to handle the cargo. Now, let us see whether that is so or not. Of course, they were to handle the cargo. You never knew a soldier yet who would not be called upon to dig trenches, to carry arms and ammunition, and to transport various articles that are necessary in the prosecution of war. If this ship were simply carrying a cargo of goods that were contraband of war, they would have had no extra men, as the crew would have landed them, and after landing the cargo the men would have

returned to the ship. There were twenty-two men in the crew of the "Laurada." Then these extra men came on board. The moment you put on a body of men, who have come on with a concerted purpose to take that cargo on land, and without any purpose of returning to the vessel, that moment it does become a military expedition, because they are in the prosecution of an act of war. If there was an armistice between two countries and a body of men should land from a ship with arms and ammunition, it would be a violation of that armistice under the laws of nations. Precisely so it must be regarded here.

How many men were there? There were twenty-four, according to the cook who served the meals on the "Laurada." But how many more were on the "Dauntless?" How many more men were expected on the "Three Friends?" How many more men were expected on the "Commodore?" The latter two did not arrive. True it is, the "Dauntless" men and the "Laurada" men united and carried the cargo off and put it on the coast of Cuba. True it is, that when they were unable to land the whole cargo at once they came back and took the rest of it. But that is entirely consistent with an act of war, and no inference of smuggling can possibly be justified from that incident.

The next argument is that the things were boxed up, but that is a point with which Mr. Lewis has not adequately dealt. True it is that they were boxed up when put on the "Laurada," but the crew, if it were a mere smuggling expedition, would have landed it in that condition; but these men, under the military direction of Captain Sutro, and the superior direction of a Cuban secretary of war, took out the larger boxes and put them into smaller boxes and constructed sacks which were to go over their shoulders and by which they were to carry those arms and ammunition, either alone or with others, to the main body of the Cuban army. That that was the purpose is just as clear as the sun at noonday.

It seems to me absurd to argue that those extra men were simply taken on board to land them upon the Cuban coast. If that had been the purpose, why did they not return to the "Laurada"? If they were simply stevedores, why did they not return to the "Laurada" and come back to Philadelphia? The moment that you put them on the Cuban coast and leave them there, as the evidence does in this case, you are bound to assume that they were there to carry the arms and ammunition to the Cuban army, and if attacked, either in the moment of landing or in the progress of the transportation, to defend the arms and ammunition with which they were plentifully supplied.

It is said there was no drilling. Of course not. Why should they drill on the way out? They would have been foolish to have done so, because they would have made evidence against themselves. Besides, many of them were probably too seasick to drill.

The next point is that no watch was set on the vessel. Why should a watch be set? They were out on the waste of waters. The ship's crew had its watch set, and the moment that there was the slightest cloud of smoke upon the horizon, or spot of white to indicate a sail, the watch would say, "Boat upon the larboard, or the starboard side." That is the purpose of the ship's crew, and the fact that this particular expedition did not have its separate watch upon the vessel where it had only friends about it, where perhaps there was not another vessel within five hundred miles, seems to me too idle to base any inference upon.

Reference was then made to the stowaways. Let me make a suggestion in this connection as to the military character of this expedition. What is an expedition? Let me read its definition. It is "an excursion, journey or voyage, made by a company or body of persons for a specific purpose." An "enterprise" is an "undertaking, something projected, attempted, particularly an undertaking of some importance, or one requiring boldness, courage and perseverance."

A military expedition is simply one that is designed to do something in the prosecution of war. It is said—and this was one of the twenty odd reasons—that this could not be a military expedition (although the dictionary does not say that there is any number required), because its members were few in number. I have already said that in addition to the twenty-four men on the "Laurada" there were men upon the "Dauntless," and shown you by the chart that they landed at a portion of Cuba which is in control of the insurgents, and where they would be joined by their friends.

But waiving that, is it necessary that there should be any given number to make an expedition? Let me read the words of a most eminent federal judge in construing this statute. He said: "This statute does not require any particular number of men to band together to constitute an expedition or enterprise of a military character. There may be divisions, brigades, and regiments, or there may be companies and squads of men. Mere numbers do not conclusively fix and stamp the character of the expedition as military or otherwise." And then he adds, and I beg your attention to these words: "A few men may be deluded with the belief of their ability to overturn an existing government or empire, and laboring under such a delusion they may enter upon the enterprise."

One of the most famous military expeditions in all history (and as Mr. Lewis referred to history, I shall venture to cite this illustration) commenced with only a few men. I refer to the time when the greatest warrior of our century, fretting in his little, island-kingdom of Elba, desirous of once again playing with the skulls of human beings as with dice for the empire of the world, by night left Elba, landed upon the coast of France, and again set up the standard of his empire. You remember how entirely successful that

military expedition was. You may remember the words of Le Moniteur, the organ of the French Government, which always reflects the views of the existing government. It described the triumphal march of Bonaparte in successive daily issues across France in these words: "Bonaparte has left Elba." "The usurper Bonaparte has reached France." The next was, "General Bonaparte is at Lyons." The next was, "The late Emperor is on the outskirts of Paris." The next day's paper had, "The Emperor Napoleon yesterday arrived at his palace in the Tuilieres."

Therefore, the mere fact that the men were few in number amounts to nothing. The history of most of the insurrectionary troubles in the South American Republics has been that they commenced with a few determined men, with a man like Roloff at the head, landing in a boat upon some lonely shore and setting up the standard of revolt. Of course it requires courage, but that is involved in the idea of an enterprise as I have mentioned.

The sole question for you to determine is, did these men come there with the purpose of fighting? Did they desire to fight? Would they have fought if occasion required? If they did, their purpose was warlike; if they did, they constituted an expedition, and his honor, the learned judge, will tell you such expedition is within the definition of the law.

What is the testimony of the case as to the purpose of the expedition? If you had no declaration on the part of any member of the expedition, you would be justified in finding, from the fact that a body of men had control over the arms and ammunition and constructed the means to assist in their portage, that they were on a warlike errand and were a military expedition.

But we do not rest upon that. We have the affirmative, uncontradicted and unimpeached evidence of at least half a dozen witnesses.

We have first the pilot, who had been in Cuban waters. He spoke the English language. It is not accurate, as Mr. Lewis said, that only the three stowaways spoke of the purpose of that expedition. There were others, and among the others was this pilot. The testimony of Heath is: "We were sewing sacks on the deck. One said: 'There comes a man-of-war (speaking of a fruiter); they will kill you!' 'No, sir; we will kill them!' he said. He said they were going to Cuba to fight. To fight whom? The Spaniards." This was a specific declaration made by one who was an active participant in the expedition that the purpose was to fight. Heath's testimony was in no way impeached. He is not one of the witnesses that was made a target for mud in the case. Let me ask you, if you had nothing more than that, with no facts contradicting it, how could you say that their purpose was not to fight? What right have you to say that when Heath took that oath on the Bible he perjured himself before Almighty God? None whatever. If there was evi-

dence to contradict him you might do it; but there is his testimony, uncontradicted, that the pilot said that they were going to Cuba to fight the Spaniards. Whom could the defendant have called to contradict it? Why, Captain O'Brien, who met them on the "Dauntless;" the captain of the "Bermuda" of the Hart line; Colonel Nunez, who met them first off Barnegat, and also down at Navassa; Rodman and others could have been called, other witnesses who were parts of that expedition, could have been called to show that the purpose was not warlike and that its only purpose was to smuggle goods, contraband of war, upon the Cuban coasts. A failure to call witnesses who were in the defendant's power to call is just as damaging a fact as affirmative evidence to the contrary. That is a familiar rule of practice in jury trials. Where, therefore, you have affirmative uncontradicted evidence that they intended to fight and that that was the purpose of the voyage, and you know that there were witnesses whom the defendant could have called, and did not call, to disprove it, you are entitled to believe that the only testimony you have as to the purpose of the voyage is true, and that their intention was to fight.

But that is not all. Heath says, "One afternoon I was helping the man they said was a pilot. He was a pilot in Cuba. I was helping him make some of those sacks. I was making fun with him and told him that a man-of-war would come and kill all hands. He said no. He said he was going to Cuba to fight against the Spaniards." Mr. Nichols was asked, "Did you ever have any conversation with the pilot?" "I did." "Was the pilot Ricardo, or another? What did they say?" "They said they were going to Cuba to fight." "Did they say whom they were going to fight?" "Spaniards. Ricardo told me this." There is Nichols, who is not contradicted in any way. Cowley said the same thing, but I will dismiss Cowley, although I am going to refer to something in Cowley's behalf in a moment, because I think that he has been unfairly dealt with in this case. Dixon says that he and the pilot were sitting on the bridge and the pilot had some grapes, which he said he got in Cuba. "What did they say (meaning the stowaways)?" "They said they were to go to Cuba to fight." "Did they say whom they were going to fight?" "The Spaniards. Ricardo told me this." Greenwood was another witness, who was uncontradicted. He said, "After we left that spot (Barnegat), while we were out at sea, I spoke to some of them, and they said they were going to Cuba to fight." "Did they say whom they were going to fight?" "Against the Spaniards."

How can you disregard such testimony? If it was contradicted, you could, in such event, refuse to accept their statements, but when there is no contradiction, and when the defendant had witnesses whom he could have called to contradict it, such as Roloff, Nunez,

O'Brien, and Rodman, and did not call one of them, how can you disbelieve it?

As to the stowaways, my friend, Mr. Lewis, outrivals Sergeant Buzfuz himself. I do not say that disrespectfully at all. The testimony is uncontradicted that two men said they became afraid as the voyage progressed. Rand said to them, "Well, when you get down to Cuba digging trenches, it will not be like promenading Eighth avenue." Digging trenches? Is that simply smuggling goods? Having made this reference to an act of war, what did these stowaways say? One of them said they were patriotic, but they were not so patriotic for Cuba now that they cared to fight for her, and thereupon they concealed themselves. It is uncontradicted that by an act of military discipline those two men were dragged out of the chain locker and forced to go upon the "Dauntless." I argued to you before, and I argue to you again, that if they had simply been laborers, as Mr. Lewis's contention is, General Roloff would have had no more power to compel those men under the muzzle of breach loading rifles to go upon the "Dauntless" than I would have had. It would have been an outrage, but it was just because it was a body subject to military orders, knowing that its members could be shot if they disobeyed them, that these men went on.

Now comes the Buzfuzianism. All our witnesses said that, having been dragged out of the chain locker, they were put on board. Mr. Lewis sees a contradiction because one witness says they were "put" on board and another says they "went" on board. Of course, they were "put" on board. They "went" on board as the deserter sometimes goes to the place of execution, with rifles behind him and before him. "Put" and "went!" I do not think that Mr. Lewis's comments on these words have ever been equalled since Sergeant Buzfuz, with face full of indignation, said, "Chops and tomato sauce! Gracious Heavens! Is the happiness of a sensitive and confiding female to be trifled away by such shallow artifices as these?"

And this was one of his twenty odd reasons that because one witness said they were "put" on board, and the others said they finally "went" on board as the result of the "putting" that there is such inconsistency in the testimony as to affect its value; if you can see anything more in that than the ingenious sophistry of counsel, who has a bad case, it is more than I can do.

The mere fact that these men cannot be shown to have ever fired at a Spaniard, does not amount to that (snapping fingers). If that were so, there could not be any conviction under this statute, and we might as well call it a dead letter.

Acts of war are various in character. One regiment may be detailed to charge, another to guard the ammunition, another to guard the commissary wagon, another to guard the hospitals, and another

to take prisoners of war to the rear. There are various military duties to perform, and all of them are acts of war as much as charging up to the cannon's mouth and firing off rifles into the eyes of the enemy. Therefore, it is not necessary for us to show that they ever reached the Cuban army, or that they were to do more than to carry overland those arms and ammunition to the Cuban army. It is enough that if this body of men combined for the purpose of landing that cargo and carrying it to the seat of war, it is an act of war, and as such it must be regarded by anyone, it seems to me, who looks at it sensibly.

The next argument was that military expeditions do not go secretly but openly. I would like to know from what page of history my learned friend, Mr. Lewis, found that astonishing statement. Military expeditions, when they reach the seat of war, it is true, become parts of the regular army, and then they may proceed openly; but even there they do not go forward and lift their caps to the enemy, and say: "Gentlemen, good morning; we have come to fight." That may have been the old Greek way, as described by Homer, but modern warfare partakes a good deal more of the character of an ambuscade. Therefore, the fact that there was secrecy about this expedition, instead of leading to the inference that it was not a military expedition, leads to the inference that it was, because if it was not a military expedition it was no violation of our laws, and the deceit which was practiced would not have been necessary.

The next argument was that Roloff read novels. What should Roloff do? He would have no time to read novels after he got to Cuba; that is fair to assume. Why this tired major general should not relieve his anxious mind and the tedium of a sea trip by reading novels I am at a loss to know. At all events, what light that throws upon the character of the voyage must ever be to me an impenetrable mystery. Mr. Lewis may know. It is more than I do.

The next argument was in reference to the pilot's remarks about fighting the Spanish man-of-war. Mr. Lewis comments on that. He said they were ridiculous. The pilot did not say that the "Laurada" with twenty-five men in addition to its regular crew intended to fight a Spanish man-of-war. All that he did say was this. The pilot was evidently a man of blood. There are always some men on a military expedition who cannot wait for the battle to open, and sometimes they are the very first fellows to turn when it does. I do not know how it was with our friend the pilot. But, nevertheless, the pilot was sanguinary in his disposition. When the remark was made, "Are you fellows not afraid of the Spanish man-of-war?" He said, "No, we will just kill the Spaniards." It was a remark probably uttered more profanely than was uttered by our witnesses, but at all events it did not justify the humorous allusion of my friend Mr. Lewis to it; it does justify the conclusion to be drawn

from the evidence that their purpose was to fight or kill, and the people whom they designed to fight or kill were the Spanish. It thus proves the warlike purpose and intent of the voyage.

It is said that they had no uniform. I am not aware that the Cuban army has a uniform. No picture I have ever seen shows it. They had upon their belts and upon the holsters of their saddles the Cuban flag, and they had in boxes Cuban flags, so that when they reached the shore they could wave them.

It has been said, and perhaps this is the most forcible reason Mr. Lewis suggested, that this cargo of arms and ammunition was too great in bulk for twenty-four men to carry; but let me remind you again that they landed at a friendly spot in Cuba, at a portion of the island under the absolute control of the insurgents, and where their force would have been multiplied many fold for that purpose. It is not necessary that these rifles were intended for these men, if some of them were intended for the men. Otherwise, the men who, for instance, at Gettysburg guarded the military supplies, which were almost captured by the Confederates on the night of the second day, were not soldiers simply because they had hundreds of thousands of cartridges more than they needed. They were guarding the cartridges for the whole army of 125,000 to 150,000 men, and they were doing as warlike work as the soldiers who were repelling Pickett's men at the Bloody Angle.

Mr. Lewis then discussed my reference to Cowley. Cowley unquestionably has had his troubles, and perhaps they are such as would justify you in not believing him if he were contradicted. I have, in order that this defendant may have the benefit of every reasonable doubt, agreed that you can eliminate Cowley from consideration. Let us see who Cowley is. Cowley very frankly said that when he was a boy he had a couple of stone fights. I wonder how many men in the jury box have done little trifling things in the exuberance of boyhood that would justify police interference. Then he was convicted of having a difficulty with a policeman, and also of having been in an election fight, neither of which touched his honesty. Those he frankly told you, but he had done nothing which attacked his integrity. If you look at that certificate, if it be important, it recites in its first half exactly what Cowley said, spelling the name George Cooley. Then comes a reference to an entirely different man. "I further certify that it appears on the records of said court that one George Coley," (not Cooley) "alias Anthony Coley, described as brown, five feet five inches, black eyes, black hair, scar on the chin, (they did not dare ask whether he had a scar on the chin) twenty-two years of age, a waiter, was on the 7th day of December, 1892, convicted of larceny." Cowley was asked whether he ever travelled under the name of Anthony Coley, and he said he did not. He was asked, "Do you know a man named Anthony Coley? A. I do

not. Q. Described as brown, five feet five inches in height, black eyes, black hair, scar on chin? A. I do not. Q. Did you ever serve as a waiter? A. No, sir. I never was a waiter in my life." That was all asked before he was confronted with that certificate at all. I think it is perfectly fair to assume that as the names are entirely different upon the records of that court, that Anthony Coley is not the same man as George Cooley. If Mr. John F. Lewis were held responsible for all the men who have names like his, who have committed crimes in Philadelphia, his criminal record would be damning. So it is unfair to this man, who is, and I will repeat it again, of a despised race, a race that has little but kicks and cuffs, a race, especially in some portions of our country, which gets scant justice, I say it is unfair when they have shown that George Cooley did certain things which he admitted, to drag up a record of another man of an entirely different name, Anthony Coley, and put Coley's crimes upon George Cowley. It is a matter of indifference to me how you view Cowley's testimony, but I have said so much in justice to Cowley, who I think should not be visited with anybody else's offences than his own.

My learned friend rang the changes on fifteen dollars a week. I have only to repeat what I have said, that the facts show that the fifteen dollars a week may yield them, when they have paid their expenses, less than they would have received on the high seas with their twenty dollars a month and board and subsistence. Forty-five dollars alone was paid for the return ticket to Jacksonville and back; but Mr. Lewis graciously says: "Why did not the Government put these men in jail?" Put them in jail from last September until February! I would like to invoke the golden rule, and ask him how he would like, if he was a poor witness, with no money, means or friends, called in a matter which was not of the slightest consequence to him, and in which he very much preferred not to be a witness, to be thrust into a jail like Moyamensing, and kept there from September until February, until the Government saw fit to call them as witnesses? If you think that would be humane, I do not. I think it was better to give them that upon which they could live until they were called as witnesses in this trial.

The last point to which he alluded, and with which I am content to rest the argument of the case was that John D. Hart was entitled to the benefit of a reasonable doubt, and in that I heartily concur. If there is, under the evidence of this case, a reasonable doubt that he is guilty, give him the benefit of it, and I will not say you nay. It does not matter to me what your decision is, provided that you render it honestly and conscientiously.

Mr. Lewis said that if John D. Hart were not shown to have known what was to be done upon the high seas (those were his words in substance), you cannot find him guilty; or, in other words, he must be charged with knowledge. That is true, absolutely true.

But, gentlemen of the jury, how should we prove knowledge? There is no way known to science by which you can see the workings of the human brain. Only a few weeks ago I asked one of the most distinguished specialists in mental diseases whether he thought the time would ever come when it would be discovered how these little nerve cells in the brain, by some mysterious and infinitely marvelous process, generated thought, or even what thought is, and he said, "Never, never; that is infinite and beyond the capacity of man to know." So there is no possible way by which you can affirmatively tell what takes place in the human brain, except from what the man does. I say by his acts you must judge him, just as a tree will be judged by its fruits.

Therefore, did John D. Hart know that he was providing and preparing the means for a military expedition? How can you doubt it from the facts in this case? Who was the consignee of the ship when it came in? John D. Hart. Who applied for permission to unload after sunset? John D. Hart. Who had it cleared through his custom house broker for Port Antonio, and then, to cheat the jurisdiction of this court, cancelled it and had his coastwise clearance to Wilmington? John D. Hart. Who gave the order to Morrisey for the coal? John D. Hart. Who was instrumental in having Smith's bill paid for the yawl boats? John D. Hart. If John D. Hart did not know what was to have taken place, how is it that in the cabin room, before she left the Delaware, Murphy told Rand just where east of Barnegat the ships were to meet? If Hart did not know what was to be done, how is it that three days after the "Laurada" left Philadelphia, when she ought to have been hundreds of miles to the southward, he goes to Atlantic City, engages the "Richard K. Fox" and waits for the arrival of the party, and puts them into busses, in which he takes them to Gardiner's Ditch? He puts them in the boat, and then turns and says, "Launch off, go out to sea; you know the rest." How is it that he said to Sooy that afternoon that he wanted to engage him as a pilot, "Money don't count, you will be well paid, if you keep your mouth shut," showing his willingness to suppress evidence? How was it that Captain Murphy said to Rand, "We will see Captain Hart on Sunday morning off Barnegat?" Can you possibly doubt these facts? Those of you who have read the Pickwick Papers may remember that there was an important election in progress in an English town, and it was very desirable to keep certain voters away. That redoubtable coachman, Tony Weller, was to bring up a bus-load of voters. Before he started on this errand he was sent for by the opposition committee, who said to him, "Mr. Weller, you are going to bring up a bus-load of voters from London, are you not?" "Yes." "Well, that road is pretty bad, is it not?" "Yes; very bad." "Isn't there a very bad place at the corner where you turn, near the canal?" "Yes; it is very bad, indeed." Thereupon one of the

committee took out a five-pound note and slipped it into Tony Weller's hand. "Now, Mr. Weller, if by any mistake the 'bus should be overturned, that five pounds would be yours." "And then," according to Sam Weller, who was telling the story to Mr. Pickwick, "the hextraordinary thing was that hon the very next day, hat the werry same hour, and the werry same place, that 'bus did upset and dropped the men into the canal." You would have no doubt as to Tony Weller's purpose, or the committee's; and so, when you see the "Dolphin" and the "Greenpoint" and the "Fox" meeting the "Laurada" at a given place on the high seas, and when you see them at Navassa waiting for the "Dauntless," you need have no doubt whatever that the whole thing was arranged like an ingenious piece of clock-work, and that it was done just as Mr. Hart and the other conspirators designed it to be done.

I have done my duty in this matter, I believe. I have prosecuted the case as was my duty, endeavoring to extenuate nothing, nor to set down aught in malice. The rest remains with you. The prosecuting officer can but prosecute; Congress can but pass the law, and in the event of a sentence, his Honor, the judge, can only say what is the quantum of punishment. If it be a case for clemency, only the President of the United States can determine its propriety. But the body of men upon whom the responsibility rests of determining the fact of guilt, and that fact alone, is this jury You must put behind you all sympathies, all prejudice, all passion whatever. If you were to say, "We believe John D. Hart guilty, but we will not find him guilty, because we are not in sympathy with the legislation," you would simply break the laws just as the Government believes that the defendant has broken them.

It may seem inappropriate that a United States court should be in session on the day which is consecrated by the patriotism of our country to the memory of Washington, and yet we could, perhaps, in no better way call to mind his noble example than by vindicating the policy of "peace, commerce and honest friendship with all nations" with which his great name is inseparably identified. Conscious of the mischievous character of such military expeditions and enterprises, it was he who said that they could not receive "too close and early attention, and that they required prompt and decisive remedies."

It remains with you to vindicate this policy, and the honor of the nation as well. I said, in opening, that the imperative need of the hour was not more laws, but more obedience to the laws, to which Mr. Lewis replied that if the laws were good they would be obeyed. But who is to decide whether a law be good or evil, and whether it should be obeyed or not? If each citizen is to determine this question for himself our Government becomes one, not of law, but of lawlessness, and the operation of the laws will be unequal, because their burden will fall lightest upon those with easiest consciences.

Said the great founder of our Commonwealth, "That Government is free to the people under it where the laws rule and the people are a party to those laws." Obedience to the law, therefore, becomes the corner-stone of the Republic. For this jury to violate the law by either practically repealing an act of Congress or usurping the pardoning prerogative of the President would be to destroy the very foundations upon which our Government rests. Nay, more, it would be a violation of the oath which each juryman took when he entered that box, which was to decide the case upon the evidence and the law as interpreted by the court.

No cause can be so good as to ask you to sacrifice your honor; no men or body of men can demand that you violate your oaths. I might invoke the conscientious discharge of your duties in the words of him who said: "Be just and fear not. Let the ends thou aimest at be thy country's, thy God's and truth's." But I prefer the yet nobler invocation to duty of the same great poet:

"To thine own self be true:
And it must follow as night the day,
Thou canst not then be false to any man."

REPORT

TO

Don E. Pupuy de Lome, Spanish Minister at Washington, by the Legal Adviser of the Legation, 1897.

APPENDIX III.

PART III.

INDEX, SEE NEXT PAGE.

INDEX.

In the United States District Court.

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES
vs.
J. J. LUIS.

INDICTMENT.

The United States of America, District of Maryland.

In the District Court of the United States in and for the District of Maryland.

The Grand Inquest of the United States of America in and for the District of Maryland, inquiring for the body of said district, do on their oath present: That Carlos Roloff, otherwise known as C. Miller; Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas; and John T. Smith, otherwise known as J. T. Smith, late of the district aforesaid, yeomen, at the district aforesaid and within the jurisdiction of this court, to wit, at the port of Baltimore and State of Maryland within the district aforesaid, on the fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, did unlawfully conspire, combine, confederate and agree together, and with divers other persons to the Grand Inquest aforesaid unknown, to commit an offense against the United States, that is to say, to provide the means for a certain military expedition to be carried on from the territory of the United States against the territory and dominions of a foreign prince, to wit, against the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being then and there at peace with the said King of Spain.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That in pursuance of the aforesaid conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, on the said fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, in the district aforesaid and in the port of Baltimore, did provide, furnish and equip a certain steamship known

as the "James Woodall" for the purpose of transporting and conducting a military expedition from the territory of the United States against the said island of Cuba; contrary to the statute of the United States in such case made and provided, and against the peace, government and dignity of the United States.

Second Count.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That the said Carlos Roloff, otherwise known as C. Miller; and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis; otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas: and the said John T. Smith, otherwise known as J. T. Smith, late of the district aforesaid, yeomen, at the district aforesaid, within the jurisdiction of this court, to wit, at the port of Baltimore and State of Maryland within the district aforesaid, on the fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, did unlawfully conspire, combine, confederate and agree together, and with divers other persons to the Grand Inquest aforesaid unknown, to commit an offense against the United States, that is to say, to provide the means for a certain military enterprise to be carried on from the territory of the United States against the territory and dominions of a foreign prince, to wit, against the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being then and there at peace with the said King of Spain.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That in pursuance of the aforesaid conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, on the said fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, in the district aforesaid and in the port of Baltimore, did provide, furnish and equip a certain steamship known as the "James Woodall" for the purpose of transporting and conducting the certain military enterprise aforesaid from the territory of the United States against the said island of Cuba; contrary to the statute of the United States in such case made and provided, and against the peace, government and dignity of the United States.

Third Count.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That the said Carlos Roloff, otherwise

known as C. Miller; and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas; and the said John T. Smith, otherwise known as J. T. Smith, late of the district aforesaid, yeomen, at the district aforesaid and within the jurisdiction of this court, to wit, at the port of Baltimore and State of Maryland within the district aforesaid, on the fifth day of July, in the year of our Lord, one thousand eight hundred and ninety-five, did unlawfully conspire, combine, confederate and agree together, and with divers other persons to the Grand Inquest aforesaid unknown, to commit an offense against the United States, that is to say, to provide the means for a certain military expedition to be carried on from the territory of the United States against the territory and dominions of a foreign prince, to wit, against the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being then and there at peace with the said King of Spain.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That in pursuance of the aforesaid conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, on the said fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, in the district aforesaid and in the port of Baltimore, with the design then and there of providing the means for said military expedition, did purchase divers provisions and supplies of food, which were then and there proposed to be used, and were used, for the purpose of equipping with provisions and food the steamship "James Woodall," which said steamship was then and there to be used, and was used, for the purpose of transporting and conducting the said military expedition consisting of a body of armed men from the territory of the United States to make war against the said island of Cuba, which said military expedition, as the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, and the said John T. Smith, otherwise known as J. T. Smith, well knew, had previously been organized within the territory and jurisdiction of the United States for the purpose of making war against the said island of Cuba; contrary to the statute of the United States in such case made and provided, and against the peace, government and dignity of the United States.

Fourth Count.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That the said Carlos Roloff, otherwise known as C. Miller; and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas; and the said John T. Smith, otherwise known as J. T. Smith, late of the district aforesaid, yeoman, at the district aforesaid and within the jurisdiction of this court, to wit, at the port of Baltimore and State of Maryland within the district aforesaid, on the fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, did, then and there, unlawfully conspire, combine, confederate and agree together, and with divers other persons to the Grand Inquest aforesaid unknown, to commit an offence against the United States, that is to say, to provide the means for a certain military enterprise to be carried on from the territory of the United Srates against the territory and dominions of a foreign prince, to wit, against the island of Cuba, the said island of Cuba being then and there a part of the territory and dominions of the King of Spain, the said United States being then and there at peace with the said King of Spain.

And the Grand Inquest aforesaid, on their oath aforesaid, do further present: That in pursuance of the aforesaid conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, on the said fifth day of July, in the year of our Lord one thousand eight hundred and ninety-five, in the district aforesaid and in the port of Baltimore, with the design then and there of providing the means for said military enterprise, did purchase divers provisions and supplies of food, which were then and there proposed to be used, and were used, for the purpose of equipping with provisions and food the steamship "James Woodall," which said steamship was then and there to be used, and was used, for the purpose of transporting and conducting the said military enterprise consisting of a body of armed men from the territory of the United States to make war against the said island of Cuba, which said military enterprise, as the said Carlos Roloff, otherwise known as C. Miller, and the said Joseph J. Luis, otherwise known as J. J. Luis, otherwise known as J. Luis, otherwise known as Doctor Luis, otherwise known as J. J. Luccas, otherwise known as John Luccas, otherwise known as Doctor Luccas, otherwise known as J. Luccas, and the said John T. Smith, otherwise known as J. T. Smith, then and there well knew, had previously

been organized within the territory and jurisdiction of the United States for the purpose of making war against the said island of Cuba; contrary to the statute of the United States in such case made and provided, and against the peace, government and dignity of the United States.

WILLIAM L. MARBURY,
Attorney of the United States for the District of Maryland.

STENOGRAPHIC REPORT OF TRIAL.

BALTIMORE, March 23, 1897.

Present, Hon. THOMAS J. MORRIS, Judge.

Messrs. WILLIAM M. MARBURY and J. O. G. LEE; on behalf of the Government, and,

Messrs. BRADLEY T. JOHNSON, A. S. J. OWENS and —— BENOIT on behalf of the traverser.

COURT. In the case of the United States against Luis, Ruloff and Smith. Are you ready?

Mr. MARBURY. The Government is ready, your honor.

GEN. JOHNSON. We are ready, your honor.

Mr. Marbury asked the court to consolidate the cases and try them as one case.

AFTER ARGUMENT.

COURT. I am inclined to think that the issue presented to the jury will be less complicated if the indictments are tried separately, and as the traverser's counsel have made that point, and, as I take it, conscientiously have suggested to the court that they would be embarrassed, I shall adhere to their suggestion and try them separately. You can elect then upon which indictment you will now go to trial.

Mr. MARBURY. We will give your honor the number of it; it is Indictment No. 688, which charges conspiracy.

Mr. OWENS. May it please your honor, in the case of the United States against J. J. Luis, under Indictment No. 688, which the district attorney has elected to try, we wish to move to quash the array of jurors. I suppose this is the proper time to make that motion. I will read the motion:

"In the Circuit Court of the United States
"For the District of Maryland.

"The United States *vs.* J. J. Luis.	Indictment 688, Conspiracy.

"The traverser, by counsel, prays the court to quash the array of petit jurors selected to try this cause.

"First. Because the said jury was not drawn from a box containing at least three hundred names of not less than three hundred persons, possessing the qualifications prescribed by statute, which names were placed therein by the clerk of this court, and a commissioner appointed by the judge thereof, which commissioner was a citizen of good standing, residing in the district in which the court is held, and is a well known member of the principal political party in the district in which the court is held, opposing that to which the clerk may belong.

"Second. Because the entire panel of jurors was not drawn at one time.

"Third. That at the times of the several drawings of the names of jurors from said box there were not three hundred names in said box.

"By reason of which illegal selection of the names of persons placed in said box, and of the whole panel not having been drawn at one drawing, or that three hundred names were not in the box at one time, the right of this traverser to be tried by an impartial jury has been diminished, and he has been thereby injured.

"BRADLEY T. JOHNSON,
"LEON J. BENOIT,
"ALBERT S. J. OWENS,
"Attorneys for Plaintiff."

The statute under which the jury is drawn in the United States court, may it please your honor, is about this: The statute provides as follows——

Mr. MARBURY. What statute is that?

Mr. OWENS. The 21st Statute, Section 800, as amended by the recent act.

Mr. MARBURY. What is the act?

COURT. You need not refer to the act.

Mr. OWENS. Yes, sir; I want to read the act in its entirety to your honor; it won't take a moment.

COURT. What is the particular point; I am very familiar with the statute.

Mr. OWENS. The particular point is, that in the first place that the commissioner appointed by your honor is a well known member of the Republican party. The clerk of this court does not affiliate with any party.

COURT. I overrule that point; you need not go any further into that.

Mr. OWENS. Well, sir, the other point is that the names of the persons who were put into this box were mostly put in there just after the death of Mr. McClintock, and that it is questionable whether or not there are in that box the names of three hundred living people; and we have a right to know that, because the law says that the box shall have contained at the time of drawing three hundred persons—three hundred qualified persons.

Now, for instance, as your honor very well recollects the fact, that one of the jurymen that was sworn in the case, was 81 years old; that was discovered after the drawing was made, and his name was stricken from the roll. Now, the commissioners have in their possession that copy, a list of the names of the people in that box, and we, therefore, have the right to know and ascertain from them whether or not that box contained at the time of drawing three hundred persons who were qualified to serve as jurors in this court. We are informed that a large number of them have died, and, therefore, there may not have been that number there. We charge it with the intention of making the examination and taking the necessary proof which we are entitled to take in support of that motion; that is the point that we raise.

COURT. That is overruled.

Mr. OWENS. We reserve an exception.

Mr. JOHNSON. Another point, your honor, is that the law requires at the time of drawing there should be three hundred names in the box, and that the whole array should be drawn at one time; that is, there cannot be ten names drawn at one time or fourteen at another, or seventeen names drawn at one time, or five at another, or six at another; that the object was always to get one complete act of drawing twenty-four names from the box from three hundred names of persons qualified as jurors.

COURT. The law, as I recollect it, provides that when additional jurors are needed they can be drawn from the box, or they can be drawn from the by-standers.

GEN. JOHNSON. No doubt of that, but there must be three hundred names.

COURT. The point is that the law provides for that very difficulty. It constantly happens that after the twenty-four are drawn it is discovered that some of them cannot attend, some of them that are in occupations which prevent their continuous attendance, as this morning, for instance, one gentleman was excused because he was on the grand jury in the criminal court, and the law sensibly provides that the court may fill up the jury and have the necessary number present.

GEN. JOHNSON. But the law only provides for one drawing, and that drawing must be from three hundred names.

COURT. But the law was not intended to prevent the court from having a jury in attendance. I overrule the motion; you can proceed, gentlemen.

Mr. OWENS. Your honor, we wish to examine these jurors on their *voir dire.*

COURT. For what purpose?

Mr. OWENS. We want to examine them to find out whether or not they have formed or expressed an opinion, whether or not they were qualified; whether or not they have complied with the terms of the

law as to qualification. We do not wish, may it please your honor, I want to say at the outset, to do anything in this case except to have a fair trial, and our only effort in doing all that we have done, and that we will do in this case, is to get a fair and impartial trial.

Mr. MARBURY. We do not object to that, if your honor please.

COURT. Give me the list.

WILLIAM METZGER, being duly sworn on his *voire dire*, answered as follows:

COURT. The indictment which the court is about to try is against Carlos Ruloff and Joseph J. Luis and John F. Smith, and charges them with an offense which is provided for by legislation with regard to it, in the Revised Statutes, which prohibits a person in the United States from setting on foot or providing or preparing the means of a military expedition or enterprise to be carried against the territory of any foreign prince, power or state, and this indictment charges that the parties conspired together to commit that offense, or to provide the means for a certain military expedition to be carried on in the territory of the United States against the territory of the island of Cuba, which island of Cuba being a territory of the King of Spain, and the United States being at peace with the King of Spain. Have you formed or expressed an opinion with regard to the guilt or innocence of these parties? A. I have spoken about it, your honor, of course like general newspaper news, but then I haven't expressed a formal opinion as to the guilt of the party; just what I read every day.

Q. Is your condition of mind such as you would hear all testimony, sworn testimony that comes before you, and impartially try the case upon that testimony? A. Yes, sir.

COURT. Have you anything to ask him?

Mr. OWENS. May it please your honor, in order that we may simplify this matter, let me say to you that I have here prepared a list of questions that I wish to propound to the jurymen as they present themselves, and I would like to read them to your honor, and what your honor overrules, of course I shall not ask. I think it would simplify the matter.

"Do you know any of the Spanish consuls in this country, or the Spanish Minister?"

COURT. That is a question, is it?

Mr. OWENS. Yes, sir.

COURT. I should not allow that.

Mr. OWENS. "Have you ever had any business with the Pinkerton Detective Agency, and do you know any Pinkerton detectives?" Let me state my reason for this, if your honor please. The Pinkerton Detective Agency has been employed by the Spanish Govern-

ment to investigate this case; they have gone, as we are informed, everywhere; they have approached——

COURT. You need not go into that; I should not allow that question.

Mr. OWENS. "Have you ever been in Spain or in Cuba?"

COURT. I should not allow that question.

Mr. OWENS. "Have you ever had any business with Spain or Cuba, and if so, of what nature?"

COURT. I should not allow that.

Mr. OWENS. "Have you any conscientious scruples about the prosecution of war;" that is, whether or not he favors the settlement of disputes by arbitration.

Mr. MARBURY. What has that to do with this case?

COURT. I should not allow that.

Mr. OWENS. And the question that your honor asks: "Is there any reason why you could not give a fair and impartial verdict on the evidence?" that question, according to your honor's ruling, is the only question which your honor will allow us to ask?

COURT. Yes, sir; call the next juror.

Mr. OWENS. We reserve an exception, if your honor please. How can we determine whether or not we will challenge that juror?

COURT. There are two ways of proceeding, one is to exercise your right of pre-emptory challenge, as they are called; the other way would be to ascertain by examining the jurors on their *voire dire*, whether they were competent, and then make a list of 18 jurors, of which each party would have a right to strike three. Now, I do not think it is a matter of very much importance which way you proceed; I am willing to accept any suggestion.

Mr. OWENS. This means that we can go over this proceedure until we find 18 men who have not formed or expressed an opinion?

COURT. Yes, sir.

Mr. OWENS. And that list would be the list from which we can strike?

COURT. It would be the ordinary list.

Mr. OWENS. Well, we prefer to proceed with it that way.

Mr. MARBURY. It doesn't make any difference to us, whichever you elect.

JAMES W. MURPHY, being sworn on his *voire dire*, answered as follows:

COURT. You heard me state to Mr. Metzger, the case that was to be tried?

COURT. You understand it, do you? A. Yes, sir.

COURT. It is the Government against Ruloff, Luis and Smith for conspiring to get up a military expedition, or to prepare the means for one from this country, against the King of Spain, as a part of

his dominion, the island of Cuba. Have you formed or expressed any opinion with regard to the guilt or innocence of these parties? A. No, sir.

Q. Do you know of any reason which would prevent you from hearing the evidence and finding an impartial verdict upon the sworn evidence in this case? A. No, sir.

COURT. Accepted.

Mr. MARBURY. May I ask him a question? Where do you live? A. 1935 Pennsylvania avenue.

Q. What is your occupation? A. Paper hanger.

Mr. MARBURY. That is all, sir.

ANTON H. FETTING, being sworn on his *voire dire*, answered as follows:

COURT. I think you have heard me state the substance of this charge? A. I have, sir; yes, sir.

Q. Have you formed or expressed any opinion with regard to the guilt or innocence of the defendants? A. I have not.

Q. Do you know of any reason which would prevent you from impartially hearing the sworn testimony and finding a verdict upon that evidence? A. No, sir.

COURT. He is accepted.

Mr. MARBURY. Tell us what your occupation or business is? A. My place of business or residence?

Mr. MARBURY. Your place of business? A. 14 and 16 St. Paul street.

Q. And what is your business? A. Manufacturing jewelery.

Mr. MARBURY. That is all.

W. W. CULLUM STEWART, being sworn on his *voire dire*, answered as follows:

COURT. Have you heard me state the substance of this charge against Ruloff, Luis and Smith? A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to the guilt or innocence of these defendants? A. No, sir.

Q. Do you know of any reason which would prevent you from hearing the testimony with impartiality and finding a verdict from the sworn testimony? A. No, sir.

Q. (Mr. MARBURY.) What is your occupation? A. Clerical work.

Q. Where do you reside? A. Baltimore County, Catonsville.

CHARLES F. EARECKSON, being sworn on his *voire dire*, answered as follows:

COURT. You have heard me state the substance of these charges against these defendants, Ruloff, Luis and Smith? A. Yes, sir.

Q. Have you formed or expressed an opinion with regard to their guilt or innocence of this charge? A. Not publicly, but my sympathy would be altogether with Cuba.

Q. Well, would that sympathy prevent your hearing the sworn testimony and the instructions of the court, and finding a verdict according to the law and the sworn evidence? A. I think not; my sympathies would be the other way though.

Q. Well, but we do not find verdicts according to sympathy. A. No, sir.

Q. We find them according to the evidence and the law. A. Yes, sir, I understand that, your honor, and I think not.

Q. You could hear the testimony? A. Yes, sir.

Q. And give an impartial verdict? A. Yes, sir.

Q. Obeying the ruling of the court as to the law and giving impartial weight to the testimony? A. Yes, sir; I think so.

COURT. He is accepted.

R. FRANK LAWDER, being sworn on his *voire dire*, answered as follows:

COURT. You have heard me state the substance of these charges against these defendants? A. Yes, sir.

Q. Have you formed or expressed any opinion regarding their guilt or innocence? A. No, sir.

Q. Do you know of any reason which would prevent you hearing the testimony and instructions of the court and finding an impartial verdict according to the law and the evidence? A. None whatever, sir.

Q. (Mr. MARBURY.) Tell us what your occupation is. A. A broker.

Q. Where do you live? A. 1928 E. Pratt street.

COURT. He is accepted.

WILLIAM C. WILLIAMS, being sworn on his *voire dire*, answered as follows:

COURT. You have heard the statement of this charge against Ruloff and Luis and Smith? A. Yes, sir.

Q. Have you formed or expressed an opinion with regard to the guilt or innocence of these defendants? A. No, sir.

Q. Do you know of any reason which would prevent your hearing the testimony and the law and giving an impartial verdict? A. No, sir.

Mr. MARBURY. What is your residence, Mr. Williams? A. 2210 E. Lombard street.

Q. What is your occupation? A. Iron moulder.

ALEXANDER MCCLINTOCK, being sworn on his *voire dire*, answered as follows:

COURT. Mr. McClintock, you have heard my statement of this charge against Ruloff and Luis and Smith? A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to the guilt or innocence of these defendants? A. Well, I cannot say that I have formed an opinion; of course, I have expressed myself.

Q. Is the opinion that you have formed so deliberate that you would be unable to hear the sworn testimony and the instructions of the court in finding an impartial verdict, based entirely upon them? A. No, sir.

COURT. Gentlemen, I do not preclude you from asking him any questions about his occupation, or anything of that kind.

Mr. OWENS. We are perfectly satisfied, your honor.

MICHAEL HARRIGAN, being sworn on his *voire dire*, answered as follows:

COURT. You have heard me state the substance of this charge against Ruloff and Luis and Smith. A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to their guilt or innocence? A. No, sir.

Q. Do you know of any reason that would prevent your hearing the testimony and the instructions, and then impartially finding a verdict placed upon them? A. No, sir.

Q. (Mr. OWENS.) What is your business? A. I am in the employ of Robt. Cole & Sons, Woodberry.

Q. In what capacity? A. Laborer in the machine department.

ROBERT HOYT STEWART, being sworn on his *voire dire*, answered as follows:

COURT. You have heard the statement of this charge. A. Yes, sir.

Q. Against Ruloff, Luis and Smith. A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to their guilt or innocence of this charge? A. None whatever, sir; this is my first knowledge of the case.

Q. Do you know of any reason which would prevent your hearing the sworn testimony or instructions of the court, and finding an impartial verdict placed thereupon? A. It might be colored with my sympathy with the Cuban cause, that is all; I think I could obey the instructions of the court.

Q. I understand you do sympathize with the cause, but are you prepared to say that that would prevent your hearing the sworn testimony and the instruction of the court, and on your oath finding a verdict according to the testimony and the instructions? A. I should endeavor to do so.

COURT. He is accepted.

JOHN KING of Wm., being sworn on his *voire dire*, answered as follows:

COURT. You have heard the statement of the charges, Mr. King? A. Yes, sir.

Q. Have you formed or expressed any opinion in regard to the guilt or innocence of these defendants? A. I have not, sir.

Q. Do you know of any reason which would prevent your hear-

ing the sworn testimony and the instructions of the court and finding a verdict based upon those? A. None whatever.

COURT. He is accepted.

HENRY S. REGESTER, being sworn on his *voire dire*, answered as follows:

COURT. You have heard the statement of the charge against these defendants? A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to their guilt or innocence? A. Only in a general way.

Q. Would such an opinion as you have formed in any way prevent you from hearing the sworn testimony in the case and the instructions of the court, and finding an impartial verdict based upon those? A. No, sir.

Q. You think you could? A. Yes, sir.

COURT. He is accepted.

HENRY BRAUNS, being sworn on his *voire dire*, answers as follows:

COURT. You have heard the statement of this charge? A. Yes, sir.

Q. Against Ruloff and Luis and Smith? A. Yes, sir.

Q. Have you formed or expressed any opinion in regard to their guilt or innocence? A. No, sir.

Q. Do you know of any reason which would prevent your hearing the testimony and instructions of the court and finding a verdict on it? A. No, sir.

Q. (Mr. OWENS.) You are Mr. Henry Brauns, the architect? A. Yes, sir.

SAMUEL W. DORSEY, being sworn on his *voire dire*, answered as follows:

COURT. Have you formed or expressed any opinion with regard to the guilt or innocence of these men, upon the charge for which they are going to be tried? A. I have not.

Q. Do you know of any reason which would prevent your hearing the testimony and the instructions of the court, and finding an impartial verdict? A. No, sir.

COURT. Accepted.

WILLIAM H. CULLIMORE, being sworn on his *voire dire*, answered as follows:

COURT. You understand the charge upon which these defendants are about to be tried? A. Yes, sir.

Q. Have you formed or expressed any opinion in regard to their guilt or innocence of that charge? A. I have not.

Q. Do you know of any reason to prevent your hearing the sworn testimony and the instructions of the court, and finding an impartial verdict? A. Your honor, I pray you to excuse me.

Q. Why? A. My sympathies are for Cuba right through.

Q. Do you think that sympathy would so affect your judgment? A. Well, your honor, I belong to the Local Cuban League.

Mr. MARBURY. I think he ought to be excused, if your honor please.

COURT. All right; I will excuse him.

CHARLES MARKELL, being sworn on his *voire dire*, answered as follows:

COURT. You have heard the charge upon which these defendants are about to be tried? A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to their guilt or innocence? A. No, sir.

Q. Do you know of any reason which would prevent your hearing the sworn testimony and instructions of the court, and finding an impartial verdict based upon that? A. No, sir.

COURT. He is accepted.

Mr. OWENS. I would like to ask Mr. Markell just one question. You are not 70 years of age, are you? A. Yes, sir; I am.

Q. You are over 70? A. Yes, sir.

COURT. I think he is competent; as I look at the law, I think he is competent.

CHARLES R. WILCOX, being sworn on his *voire dire*, answered as follows:

COURT. You have heard the charge upon which these defendants are to be tried. Have you formed or expressed any opinion in regard to their guilt or innocence? A. No, sir; I have not.

Q. Do you know of any reason which would prevent your hearing the sworn testimony and instructions of the court, and finding a verdict placed upon that? A. No, sir.

COURT. He is accepted.

Q. (Mr. MARBURY.) You are not a member of any society to free Cuba? A. No, sir.

CHARLES GRIFFIN (colored), being sworn on his *voire dire*, answered as follows:

COURT. You have heard the charge upon which these defendants, Ruloff, Luis and Smith, are about to be tried. A. I have.

Q. Have you formed or expressed an opinion in regard to their guilt or innocence? A. No, sir; I do not.

Q. Do you know of any reason which would prevent your hearing the testimony in this case, the sworn testimony and the instructions of the court, and finding an impartial verdict based upon it? A. Yes, sir.

Q. You think you could? A. Oh, yes, sir.

Q. You know of no reason to prevent it? A. No, sir; I have no reason whatever, sir.

COURT. Swear him.

GEORGE W. O'DONNELL, being sworn on his *voire dire*, answered as follows:

COURT: You understand the circumstances of the charge upon which these defendants are to be tried now? A. Yes, sir.

Q. Have you formed or expressed any opinion with regard to the guilt or innocence of these defendants? A. No, sir.

Q. Do you know of any reason which would prevent your hearing the testimony and instructions of the court, and finding a verdict based upon them? A. No, sir.

COURT. He is competent.

CLERK. Those are all the names.

Whereupon the jury was sworn as follows: William Metzger, James W. Murphy, Anton H. Fetting, William C. Williams, Alexander McClintock, Michael Harrigan, Robt. Hoyt Stewart, John King (of Wm.), Henry S. Regester, Samuel W. Dorsey, Charles R. Wilcox, George W. O'Donnell.

Opening statement.

Mr. LEE. If your honor please, and gentlemen of the jury, Joseph T. Smith, Carlos Ruloff and Joseph Luis stand indicted by this court under Section 5440 of the Revised Statutes of the United States, as amended by the Act of 1879, May 15th. Now, that statute makes it a crime for two or more persons to conspire together to violate a United States statute. The statute that these men conspired together to violate in this case, reads as follows, and it is Statute No. 5286:

"Every person, who, within the territory or jurisdiction of the United States, begins, sets on foot, or provides or prepares for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign power, prince or state, or any colony, district or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding $3,000 and imprisoned not more than three years.

In June, 1895, Smith, who lived at 126 Broadway, New York, held a meeting with one John F. Hudson and Joseph J. Luis, in his office; we will show to you that Smith exhibited there a letter from the Cuban Junta, in which they asked if Hudson would undertake another expedition against Spain in the island of Cuba. It seems that Luis, Hudson, and Smith had been friends since 1886, that we will endeavor to show you; that Hudson had commanded previous expeditions against the Spanish dominions in Cuba, and that he had commanded a steamship called the "Hornet" and one called the "Morning Star." At this meeting in the latter part of June, 1895, Hudson accepted the proposition made to him by Smith and

Luis, and he was commissioned to look out for a steamship which would suit the purposes. With that end in view, he communicated with some ship brokers in New York, namely, a Mr. Holmes, and there he found out that there was a fisher, or fishing steamer in Baltimore here, which would probably answer their purpose. He came to Baltimore, Hudson did, in pursuance of this agreement, and looked at this steamer, which was lying at Woodall's wharf, on Locust Point; she was a steamship of about 150 tons, and seemed, after inspection by Hudson, to be just the steamer they wanted; the price of the steamer was $15,000; William E. Woodal & Company is the firm who were the owners, I believe, agreed to take $13,000 for the vessel, which was named the "Woodall." Hudson returned to New York and reported this fact to Luis and Smith; that was on the 28th day of June, 1895, and they agreed—Luis and Smith agreed—that that was the ship they wanted, and told Hudson to meet them at 5 o'clock that afternoon, and they would have the necessary funds. Hudson came back at five and put the price of the "Woodall" to Luis, who seems to have been the man who handled the funds, in the conspiracy, at $15,000. Luis handed over to Smith, in New York, on the 28th day of June, 1895, fifteen $1,000 bills, and also gave him an extra thousand dollar bill to start the expense of the preparation of this steamer.

Hudson left that afternoon for Baltimore, and he took with him one Tinsley, a mechanic and machinist, who was to examine the machinery of the "Woodall" and report upon that. Hudson and Tinsley came to Baltimore that night, getting here the next morning, registered at the City Hotel in their own names, and immediately went to the Woodall shipyards and bought the "Woodall;" purchased her and proceeded to supply her with the necessary stores and provisions. On that same day, to wit, the 29th day of June, Carlos Ruloff joined Hudson and Tinsley at the hotel, the City Hotel, Ganshorn's Hotel, I believe it is called, and also Dr. Luis. Dr. Luis registered as J. Lucas or John Lucas, and Gen. Ruloff, whom we will endeavor to show to you is the War Secretary of the Cuban cause, registered as C. Miller. This man Ruloff, under the name of Miller, and Luis under the name of John Lucas, and Hudson had frequent meetings at the City Hotel in Miller's room; they provided the ship with stores and they put on board of her about 128 tons of hard coal. They put aboard of her tin plates, spoons, shoes, and necessary provisions, beef and vegetables, and various things, to the extent of about $4,000. On the 9th of July, the "Woodall" was prepared to sail and she left Baltimore, between the hours of 10 and 11 o'clock in the morning; she had on board the stock and stores of provisions which had been provided by these gentlemen, and then she had her crew, sixteen in all; Captain Hudson, mate Crothers, a man named Rocker, Cronin, Lawrence, Cook and six seamen, and as passengers Gen. Ruloff, under the

name of C. Miller, and a colored man called Henry; that is the crew that she sailed from Baltimore, from Locust Point, on July 9, 1895. In addition to that they had on board a man named O'Neill, who went aboard to adjust the compasses in the steamer; they went down the bay and went out the Capes; they got their clearance papers presumably and ostensibly for Progresso, Mexico, and Ruloff represented to the crew that he owned a plantation there and was going down to look after it; after they had been to sea for eight days, they came to Tanquai, which is one of the Florida Keys; there they sighted land in the afternoon, and about 8 o'clock there came on board of this steamship 150 to 165 Cubans; the evidence is a little varied; it varies somewhat there. These Cubans we will show you were an organized army; they had their uniforms, and they had also little Cuban flags in their caps; they were armed to the teeth, they each one had revolvers, and each one had his machete, his knives, and they seemed to be in every sense, as we will show to you by the evidence, a small army. Among the body of Cubans there taken on, there is some evidence that Maceo was there, the man whom we all know was killed in Cuba last fall.

In addition to taking on these 150 or 160 Cubans, they put on board the "Woodall," off the Florida Key, some 400 pounds of dynamite, 500 rifles and a lot of dynamite caps and electrical appliances, and after these men got aboard, it took from 8 o'clock in the evening until midnight to get them all on board, and they immediately were supplied with the shoes which had been put aboard the "Woodall" in Baltimore, and they were fed, and they seemed to be in an exhausted condition. As the evidence will show, they stated that they had waited there, I think some six weeks, waiting for this expedition. When they got on board, General Ruloff immediately took command; he then appeared in his true colors; he was C. Miller no longer; he took command of the expedition. These 150 Cubans were organized; they each had an officer in charge; they had sergeants, corporals and lieutenants, and behaved, as we will show you, exactly like a small army. The crew on the "Woodall," with these men on board, and this ammunition, rifles, &c., set sail from Panquai and sailed directly to Cuba; they arrived at Santa Clara, which is a port just north of Trinidad, on the southwest side of the island, about July 24, and there they were landed, 8 or 9 boat loads of them, put off on the Cuban coast. The "Woodall," after she had landed this expedition, proceeded to Progresso, in Mexico, and there they sent a telegram, which we will show you, to Dr. Luis, in New York, saying that they had arrived safely and the expedition had been successfully landed.

Just after they left Santa Clara the "Woodall" encountered a Spanish cruiser, but seems to have gotten out of the way of her. From Progresso the "Woodall" went to New Orleans, and there the crew disbanded and the "Woodall" was sold by Dr. Luis, who

came to New Orleans, and had several conferences there with Captain Hudson. The crew, after they left the "Woodall," proceeded to Baltimore, and when they got some 3 or 4 hours out of New Orleans, they were approached by Captain Hudson and a member of a ship broking firm in New Orleans, and were given $50 apiece and told to go on and say nothing about the affair; that is the expedition.

The theory of our case, and the way in which we will endeavor to put it before you, will be to show you, to prove to you conclusively, that this was an expedition, that it was against Spanish dominion in Cuba, that it was landed there, and then we will endeavor to show you the connection that Dr. Luis had with it, the meetings that he had with Ruloff, with Smith and with Hudson in New York City and in Baltimore, and in New Orleans, after the expedition had been landed. In addition to that we will endeavor to show you the persons and firms from whom the supplies were bought in Baltimore; we will show you where the nautical instruments were purchased, who sold them, who bought them, and presumably what they were intended for; we will show you where the coal was bought, and shoes, and the tin plates, and the tin cans and other supplies that went aboard the "Woodall" from the first of July to the ninth. We will also show you who bought the "Woodall."

We will bring before you the crew of the "Woodall," all of course ignorant of this expedition, all men taken on a schooner, presumably with the intention of going to Progresso, in Mexico, and then we will bring before you Captain Hudson who will testify and corroborate as to the whole concern.

Now you understand the indictment. The indictment charges these gentlemen with conspiracy; two or more men conspiring together to violate the statute of the United States, and the statute as to the fitting out of this expedition in July, 1895. Now, that is our case.

Mr. OWENS. We will not make any statement at this time, if your honor please.

COURT. Who of the defendants are here present?

Mr. MARBURY. Only one of them, your honor.

Mr. OWENS. Dr. Luis.

COURT. The others are not here?

Mr. MARBURY. The others do not appear to be here; General Ruloff seems to have forfeited his bail. Call Mr. Holmes.

SAMUEL HOLMES, witness called and sworn for the Government, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) State your name, please. A. Samuel Holmes.

Q. Where do you reside? A. In New York, sir.

Q. And what is your occupation? A. Steamship broker.

Q. Did you ever meet the defendant in this case, Dr. Luis? A. No, sir.

Q. Did you ever know Joseph T. Smith? A. Yes, sir.

Q. And do you know Captain Hudson? A. Yes, sir.

Q. Tell us whether you have had any transactions with them; and if so, state what they were? A. Mr. Smith came to my office in reference to purchasing a steamer, to go to Mexico, and after discussing matters with him a little while, he brought back Captain Hudson to my office, and Captain Hudson went over several boats that I had for sale, the particulars of them, and selected the "James Woodall" as being a likely steamer for his purpose. I gave him a letter of introduction to Mr. Woodall in Baltimore, and he came on and examined the steamer, and it finally resulted in the vessel being purchased.

Q. Well, now, Mr. Holmes, when did this first interview between you and Mr. Smith and Captain Hudson take place? A. It was in my office in New York.

Q. And when was it; what date? A. I think it was in June.

Q. Of what year? A. 1895.

Q. June of 1895? A. Yes, sir.

Q. And did they tell you for what purpose they wished to purchase the vessel? A. No, sir; it was simply for the coasting trade to Mexico and Central America.

Q. Where was the "Woodall;" the steamer "Woodall," lying at that time? A. She was lying at Mr. Woodall's yard.

Q. Here in Baltimore? In Baltimore; yes, sir.

GEN. JOHNSON. He does not know that.

Mr. MARBURY. Well, where do you suppose she was lying then; where did you sell her from? A. Here, in Baltimore.

Q. You acted as broker for Woodall? A. Yes, sir; I acted as broker for Woodall.

Q. And do you have vessels for sale? A. Yes, sir.

Q. As a part of your business? A. Part of my business.

Q. Like a real estate broker would have houses for sale? A. Yes, sir.

Q. How often did they come to your office?

Mr. OWENS. How often did who come?

Q. How often did Smith and Hudson come to your office? A. I think they only came once. Mr. Smith; no, he came twice; he came first by himself and then he came with Mr. Hudson.

Q. Where is your office located? A. In the Morris building, Nos. 66 and 68 Broad street, New York.

Q. Well, did you effect the sale to them? A. Yes, sir.

Q. And did you have anything to do with the payment of the money? A. No, sir; not a thing.

Q. The money did not pass through your hands? A. No, sir; not at all.

Q. You simply effected the sale? A. That is all, sir.

Q. And had nothing to do with the payment or collection of the money? A. No, sir; not at all.

Q. You simply effected the sale? A. That was all, sir.

Q. And had nothing to do with the payment or collection of the money? A. Nothing whatever; that was done directly with Mr. Woodall.

Q. That was done directly with Mr. Woodall? A. Yes, sir.

Mr. MARBURY. That is all I want to ask Mr. Holmes.

GEN. JOHNSON. I do not care to ask him any questions.

(No cross-examination.)

JAMES WOODALL, being sworn on behalf of the Government, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) Mr. Woodall, you are the owner of the shipyard here, I believe, in Baltimore. A. Yes, sir.

Q. Were you the owner of a vessel of your own name? A. I was, sir.

Q. In 1895? A. Yes, sir.

Q. Did you sell that vessel? A. We did, sir.

Q. To whom did you sell her? A. Captain Hudson represented the purchaser, I believe.

Q. What is that? A. Captain Hudson.

COURT. Your name is James Woodall? A. Yes, sir.

COURT. And that was the name of the steamer. A. The "James Woodall;" yes, sir.

Q. (Mr. MARBURY.) Have you seen him in court to-day? A. Yes, sir.

Q. What sort of a vessel was the "Woodall?" A. Well, she was known as what is termed a fishing steamer—a steamer about 115 feet long, about 23 feet wide, and about 8 or 9 feet deep.

Q. A fishing steamer? A. Yes, sir.

Q. How much water would she draw? A. Well, she would draw, loaded, about 11 feet of water.

Q. About 11 feet? A. Yes, sir.

Q. That is not a very heavy draught. A. No, sir; light draught; built for that purpose.

Q. Did she carry any sails? A. She had two sails; what is known as fore-and-aft rig.

Q. Schooner-rig? A. Yes, sir.

Q. Did she have any sail power, besides the steam power? A. Yes, sir; she had sail power; she had three sails.

Q. What speed could she make? A. Well, she was reputed to make 12 miles, sir.

Q. 12 miles? A. Yes, sir; 12 knots.

Q. Not 12 knots? A. Well, about 12 knots; that was the reputation she had, and I suppose she was about what you might call a 12-knot vessel.

Q. Well, now, for what kind of business was she fitted; what sort of trade? A. She was fitted expressly for the fishing business, for the pressing of the oil in the fish, to make oil, to press the oil out.

Q. For what purpose did you sell her on this occasion, what purpose did the purchasers use her for? A. They didn't express any purpose; they purchased her and paid for her, and that was all we cared about it; they inquired about her.

Q. Who purchased her? A. Captain Hudson.

Q. How much did he pay? A. $13,000.

Q. When was that? A. That was sometime about June or July of 1895.

Q. Did you have more than one interview with him in regard to it? A. Only the one, sir; after he seen her; he came there and inquired about the price of her and the condition of her, and he went away, and the next we received was some telegrams from him, and the next was his appearance and he paid for her.

Q. Did he make any examination of her machinery or hull to see what condition she was in before paying for her? A. Yes, sir; about 36 hours possibly before buying her he went back to New York, after he examined her.

Q. Did he examine her himself or was anybody else with him? A. He had a party with him, sir; a machinist. There was very little examination made in her, she was in good condition, and accepted under our recommendation; she was in good order, good shape.

Q. His own machinist did examine her? A. Oh, yes, sir; he did; he inquired somewhat about her.

Q. What became of her after the sale? A. She stopped and loaded and fitted out, and went away in about a week, I suppose.

Q. How long did she remain in the yard before she left? A. I suppose 7 or 8 days; I cannot say positively as to how long.

Q. What do you mean by saying she was fitted out? A. Well, they had some davits put on her, and a little preparation that is necessary to do up a vessel after laying for about a year. She had been laid up for a year and there was a little caulking done; I think that was done; she was put in the dry dock and painted, all of which would be necessary for a vessel going on a trip of that class.

Q. Were there any provisions put on board of her? A. Yes, sir; I seen provisions put on board of her.

Q. What kind of provisions? A. Well, the principal thing I seen was cabbage and potatoes.

Q. Cabbage and potatoes? A. Yes, sir.

Q. How much of it did you see? A. Well, there was—there

didn't seem to be an unusual quantity for going on the cruise she was going on, as far as the provisions I seen.

Q. Do you know how much provisions were put on her? A. Well, there was possibly brought under my notice about 5 or 6 barrels of cabbage, and possibly as many potatoes; I didn't charge my memory with all that; what she took with her when she went away and got off.

Q. You don't know of your own knowledge how much? A. No, sir.

Q. Do you know what sort of coal she shipped? A. Hard coal; yes, sir; that was in what was known as the fish bunk. I seen the hard coal from the top of her; she went away to get hard coal and came back to the yard.

Q. Hard coal for the boilers? A. Yes, sir; for the purpose of use in the boilers.

Q. What kind of coal would she generally use? A. She was fitted for either soft or hard coal.

Q. Which is the more expensive? A. Well, I don't know; I couldn't say; I should think the hard coal burns longer than soft coal; it costs more by the ton, but the hard coal lasts longer.

Q. What kind of coal is ordinarily used in steamers doing a coasting trade? A. Well, steamers out of this harbor generally use soft coal.

Q. What is the difference between hard and soft coal in regard to the amount of smoke they will make? A. Well, the soft coal will make the most smoke.

Q. The hard coal will make very little smoke? A. Very little smoke; yes, sir.

Q. Did you notice whether she put in any other provisions in there besides those that you have mentioned; I mean to say any other thing at all? I don't mean things to eat, but any other thing. A. Some little canned goods would come down in boxes, but I cannot say that I noticed anything special, because I had no idea what she was going to do; the captain said that she was going to Progresso.

COURT. That is Captain Hudson? A. Yes, sir; Captain Hudson.

Q. (Mr. MARBURY.) Where is Progresso? A. They told me it was in Mexico, sir.

Q. Is it there? A. I suppose it is; it is in the geography, yes, sir; there is such a place of that kind on the map.

Q. That was the first time you had heard of Progresso, was it? A. Yes, sir; I think it was the first time I had heard of it; yes, sir.

Q. Now whom else besides Captain Hudson did you see aboard that ship? A. I seen no one but Captain Hudson there and the crew that was about her; that was all.

Q. Of whom did the crew consist? A. Well, there was an engineer, two firemen and the cook was the principal parties that came

under my notice, and that was more through inquiries that they would make in regard to little changes that they wanted. We had quite a little to do that they inquired of—the crew.

Q. The cook? A. Yes, sir.

Q. How many engineers did they have? A. Well, I think there was two there, but there was only one that I came in contact with, and that was the chief engineer.

Q. Do you know how many seamen they shipped? A. No, sir; I don't know anything about the number of seamen.

Q. Did you ever see the defendant here, Dr. Luis, down there? A. No, sir; I never seen him, sir.

Q. You do not know General Ruloff, do you? A. No, sir; I don't know General Ruloff. I never saw him.

Q. Do you know a man who called himself C. Miller? A. No, sir; I didn't see anyone in connection with her whatever, only Captain Hudson, that seemed to have command there.

Q. You did not see her after she left port, of course? A. No, sir; I did not.

Mr. MARBURY. That is all, General Johnson.

Cross examination.

Q. (GEN. JOHNSON.) I just want to ask you one question about the comparative steam qualities of hard and soft coal; does soft coal make more steam or less than hard coal? A. Well, I think it requires firemen who are familiar with the two kinds of coal to use it; very often, if you take a man that has been using soft coal, to fire with hard, he is not a success at it.

Q. Well, as to space, it would take up more room; you could get more hard coal in the same space than you could soft coal? A. Yes, sir; you could get more hard coal in the same space; that is, that would be a benefit to you.

Q. To save space in putting in the hard coal? A. Oh, yes, sir.

Q. What do you suppose is the ratio between the two; can you get a quarter more hard coal than soft? A. Well, they would burn less hard coal than they would soft, running the same distance of miles.

Q. What I want to get about is the space in the vessel, I want to save all the space I can and I put hard coal in; now, how much space would hard coal save in comparison with soft coal? A. Well, I couldn't say that; I don't know as I am familiar enough with it; it has never come under my notice, to measure it, but you would get more hard coal in the same space than you would soft; the soft is very bulky.

COURT. That is by the ton? A. By the ton; yes, sir.

Q. (GEN. JOHNSON.) A ton of hard coal will run a vessel further than a ton of soft coal? A. Yes, sir.

Q. A good deal further? A. Yes, sir; quite a distance.

Q. I think it is 50 per cent. The vessels use soft coal here because it is cheaper; is that the idea? A. Yes, sir.

Q. You always buy soft coal here in Baltimore, because you can get it cheaper? A. Yes, sir; it is very near half the price of hard coal; less than half the price.

Mr. LEE. That is all, Mr. Woodall.

CAPTAIN JOHN M. HUDSON, produced on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) Where do you live at this time? A. In Flatbush, Brooklyn.

Q. How long did you follow the sea? A. For 50 years, sir.

Q. That is a right long experience; how long were you commander or captain of vessels? A. For the last 30 years.

Q. Do you know the defendant here, Dr. Luis? A. Yes, sir.

Q. How long have you known him? A. Since 1886, June.

Q. Since 1886? A. Yes, sir.

Q. How did you first become acquainted with him? A. In connection with the bark "Lone Star."

Q. You say you first became acquainted with him in connection with the "Lone Star?" A. The "Morning Star."

Q. Well, what did you have to do with the "Morning Star," or the "Lone Star?"

Mr. OWENS. I object to that, if your honor please. Here is a witness who testifies that in 1886 he met him in connection with a boat called the "Morning Star;" I submit that has nothing to do with this case.

Mr. MARBURY. It is only introductory; it is not important; I think I am entitled to show his acquaintance with him; his means of knowing the defendant; that is all.

Mr. OWENS. He stated that just now; that he met him in 1886.

Mr. MARBURY. Well, we won't press it.

COURT. Well, if you do not insist upon it, go on.

Q. After this transaction with the "Morning Star," whatever that was, when did you next see Luis? A. I saw him several times in between, before I met him about the Woodall.

Q. Now, when did you first see him about the Woodall? A. In June.

Q. June of what year? A. 1895.

Q. Then how came you to meet him, and what took place? A. In the first place, Dr. Luis, about March of 1895, wrote to Smith, asking him if I was there, and if he saw me——

Mr. OWENS. I object to that.

Mr. MARBURY. That is all right; we will not press it; when did you hear first from Luis directly? A. Oh, in June, 1895.

Q. Where did you see him? A. At Smith's boat shops.

Q. Where is that? A. 159 South street, New York.

Q. And who is Smith? A. A boat builder.

Q. And what is his name? A. John T. Smith.

Q. How long have you known him? A. I have known him for 30 years.

Q. How did you come to go there; how did you happen to meet Luis at Smith's place? A. By appointment.

Q. By appointment with whom? A. Dr. Luis came there about the middle of June, and authorized Smith and myself to look out for a vessel.

Mr. OWENS. I object to that.

Mr. MARBURY. Well, leave that out. What took place? Did you go there? You say you met him there by appointment, at Smith's office. Now tell us what took place when you met Dr. Luis there at Smith's office? A. A general conversation to look after a vessel.

Q. What sort of vessel; for what purpose? A. To go to Cuba.

Q. To go to Cuba; for what purpose? A. To carry a party and arms.

Q. Well, was there any understanding as to what party you were to carry; from what point? A. Not then.

Q. Well, go ahead and tell us, now, what further took place. A. We then went to work; me and Smith went to several brokers' offices to see what vessels there were on hand.

Q. You say, you and Smith. A. No; Smith first.

Q. Did he find any? A. Finally he found a description of a suitable vessel at Mr. Holmes' office.

Q. Well, what then? A. After some dickering about the price—the price was $15,000—Smith, after a few days there, telegraphing, got them down to $13,000; then I came on and examined her, with Engineer Tinsley.

Mr. OWENS. He did not go with Smith, did he; who came on to examine her? A. Tinsley and myself.

Q. (Mr. MARBURY.) Did you find her? A. We did; at Mr. Woodall's shipyard.

Q. What sort of a vessel was she? A. A first-class.

Q. About what size; what build? A. Fisherman build.

Q. Was she a steamer? A. Steamer; schooner-rigged.

Q. Well, did you make the purchase at that time? A. That was all agreed on.

Q. When did you make the payment? A. I went back and reported, and gave him the news and got the money, and left that same night.

Q. Well, now, to whom did you report, and from whom did you get the money? A. I reported to Smith and Luis.

Q. Who gave you the money? A. Well, Dr. Luis paid the money to Smith and Smith paid it over to me.

Q. In what shape was the money? A. Sixteen $1000-bills.

Q. Well, for what was this money intended to be used? A. To purchase the "Woodall" and fit her out.

Q. Well, after receiving this money for that purpose, what did you do? A. I came to Baltimore.

Q. And then what took place; after you came on to Baltimore, what did you do? A. About 8 o'clock on Saturday morning, the 29th day of June, 1895, I paid Mr. Woodall $13,000.

Q. Now, that completed the purchase of the vessel? A. Yes, sir,

Q. Now, how about the equipping of her, the provisioning. A. Well, I had another $1,000 with me to commence it.

Q. What did you do with that? A. I made it go as far as it went in paying bills.

Q. What sort of provisions did you purchase? A. All sorts of ship's provisions.

Q. Well, how much, I mean to say? A. I can't give that from memory; I can show you the duplicate bills.

Q. Suppose you give us the stuff in a general way; what sort of stores you bought? A. Well; beef, pork, 400 pounds of canned corn beef, two pound cans, and a lot of roast beef in cans, roast mutton, and corn, beans, peas, tomatoes and oysters, and some other things; two cases of oysters, and about a dozen hams, and so on; ten barrels of bread, five or six barrels of flour, ten barrels of potatoes, some two or three barrels of assorted vegetables, including one barrel of onions.

Q. Was that the quality of provisions which you generally furnish to a crew going on a coasting voyage of this kind? A. Generally what I would furnish.

Q. How did the quantity compare with the amount usually supplied to a vessel going as far as Progresso? A. I provided for an extra quantity of people; enough to last about 100 people about a month.

Q. How many did you have in your crew? A. Sixteen, on the article.

Q. Then I understand when you started you had sixteen; did that include the officers? A. Yes, sir.

Q. It included the captain and the engineers, as well as the seamen? A. Yes, sir; the captain, cook, engineers, firemen and seamen.

Q. Sixteen in all? A. And one helper.

Q. And you shipped provisions for about a hundred men? A. Yes, sir.

Q. Enough to last a hundred men about a month? A. Yes, sir.

Q. Well, now, where was Dr. Luis at the time you were purchasing these provisions and equipping the vessel? A. Here, in Baltimore.

Q. When did he come here? A. On a Monday, if my memory serves me right.

Q. Was that after the purchase of the vessel? A. Yes, sir.
Q. Where did he stop? A. At the City Hotel.
Q. You mean Ganzhorn's Hotel? A. Yes, sir.
Q. Where were you stopping? A. At the hotel, there, too.
Q. You were stopping at the same hotel? A. Yes, sir.
Q. How did he register there?
WITNESS. Me?
Mr. MARBURY. No; Dr. Luis.
Mr. OWENS. I object to this.
Mr. LEE. Well, we will prove it by the City Hotel register.
Mr. OWENS. I ask for the best evidence in this case, and the best evidence in this case will be the register of the City Hotel.
Mr. MARBURY. All right, we will produce that.
Mr. OWENS. I object to this witness being asked.
Mr. MARBURY. Well, then, we won't press it if you object; we don't want to get in any testimony that is not satisfactory. Now, Captain, you say he stopped at the same hotel you did? A. Yes, sir.
Q. What became of Smith? A. He left him in New York.
Q. You left him in New York? A. Yes, sir.
Q. He didn't come here at all? A. No, sir.
Q. Was there anybody else besides Smith and Lewis that you met in connection with this arrangement? A. Ruloff.
Q. Well, who is Ruloff?
WITNESS. Who is he?
Mr. MARBURY. Yes, sir.
A. He was called Mr. Miller there.
COURT. You mean at the hotel? A. Yes, sir.
Q. (Mr. MARBURY.) He was called Mr. Miller at the hotel, but where did you first meet Ruloff? A. In the spring of 1880.
Q. Where did you first meet him? A. In New York.
Q. You first met him in New York in the spring of 1880? A. Yes, sir.
Q. Where did you first meet him in connection with this matter? A. On Monday or Tuesday after I got here, I don't remember which.
Q. That was after the purchase of the vessel? A. Yes, sir.
Q. You didn't have any talk with him before the purchase of the vessel? A. No, sir; I didn't see him.
Q. Well, how long was Ruloff here before you started on that expedition? A. He came on Monday or Tuesday, I don't remember which; I got here on Saturday and got the vessel, and on Monday or Tuesday he came here.
Q. How long after that before you started on your expedition? A. On the 9th day of July.
Q. How many days was Ruloff and Luis here before you sailed? A. About 7 days.

Q. What did you do after that; did Ruloff stop at the City Hotel too? A. Yes, sir.

Q. You say he was known as Mr. Miller there? A. Yes, sir.

Q. How was Dr. Luis known? A. As Dr. Lucas; not Doctor Lucas, but Mr. Lucas.

Q. Mr. Lucas and Mr. Miller then were with you there. Now, what did you see of them during the time that you were providing or securing provisions for the vessel? A. I saw them every night.

Q. Where did you see them? A. In Ruloff's room.

Q. To what extent were they aware of the fact that you were securing these provisions?

Mr. OWENS. I object to that question being asked in that way; ask him what he did; not what may have been the impression in their minds.

Mr. MARBURY. I cannot do it any more direct.

Mr. OWENS. Yes, you can; you can ask him what they did and what they said.

Mr. MARBURY. Well, tell us all the conversations, nearly as you recollect, that took place between you and Luis and Ruloff during the time that you were purchasing these supplies for the "Woodall?" A. Well, that is pretty hard; I reported to them every night.

Q. What did you report? A. Progress, and how I was fitting out.

Q. Well? A. And when I went around there for cash I got the money from Dr. Luis to pay the bills.

Q. Do you remember any of the persons from whom you purchased provisions? A. From Loud & Claridge, I purchased the provisions.

Q. What sort of business do they carry on? A. Ship chandlery.

Q. Do they furnish provisions of all sorts for vessels? A. Yes, sir.

Q. Well, how much did the provisions cost altogether; do you remember, about? A. Well, about $600.

Q. All these provisions that you spoke of just now, for one hundred men a month, could you get them for six hundred dollars? A. Well, it may be a little more, but not much; that is about the value of the provisions.

Q. In reference to coal, how much coal did you get? A. 140 tons.

Q. What did that coal cost per ton? A. I don't remember.

Q. What kind of coal was it? A. It was hard coal.

Q. Well, Mr. Woodall testified that you generally used soft coal from this port; what made you get hard coal? A. Well, it is more economical and lasts longer and gives no smoke.

Q. How much did the coal cost? A. I don't remember that, sir.

Q. Was the cost of the coal—was that included in this $600? A. No, sir; that was only provisions; the $600 only covered the provisions.

Q. The coal cost you, 140 tons of coal, hard coal, cost about twice as much as soft coal? A. Either $4.50 or $5.50 a ton; I don't remember which.

Q. Well, tell us, in these reports, in these meetings or conferences that you would have with Luis and Ruloff at Ganzhorn's Hotel in the evenings, what subject was discussed between you while there? A. Well, general affairs as to where we were going; up to that time I did not know where I was going from here. I had an idea that I was going to go over the Spanish main to operate from there.

Q. Now, what do you mean by the Spanish main? A. From Spanish America.

Q. That means South America? A. Honduras, or anywheres south of that.

Q. Anywhere south of Mexico? A. Yes, sir; then I found that I was to go down to Florida.

Q. Now, from whom did you find that you had to go to Florida? A. From Ruloff; in fact I did not know Ruloff was going at all until I found him here in Baltimore.

Q. Well, when did you find out? A. When he arrived.

Q. When did Ruloff tell you where you were going to start from? when did you find out from what point you were to start that expedition? A. I found out shortly after he got here.

Q. What did he tell you about it? A. He told me then that he was going down to the Florida Keys, and that he brought a negro pilot with him to show me the way, and he was the man that went on the articles as "helper," and I left him on the coast.

Q. For what purpose were you to go to Florida Keys? A. To take the party; Ruloff said he had about a hundred men there; to take a hundred men away.

Q. Now was Luis present when Ruloff gave you this information? A. Yes, sir.

Q. And you were to go down to the Florida Keys and take a hundred men away? A. Yes, sir.

Q. For what purpose? A. To land them in Cuba.

Q. What kind of men were they? A. All Cubans.

Q. All Cubans? A. No; there were some Columbians in it.

Q. From South America? A. Yes, sir.

Q. Now, for what purpose were you to take these hundred men to Cuba? A. To land them there.

Q. Well, what were they going there for; going for their health? A. They were going to make what they could, according to the programme.

Q. For what purpose, I mean, was the—I don't understand

what you mean by making what they could. A. Well, it seem to me——

Mr. OWENS. I object.

Mr. MARBURY. Let the witness testify.

Mr. OWENS. He is testifying to the intention of the hundred men, as I understand.

Mr. MARBURY. Well, then, tell us for what purpose Ruloff was going to take the men; what purpose did he and Luis tell you they were carrying these men there for; I don't want to put words in your mouth, but just tell us all about it.

Mr. OWENS. He testified that these conversations were with Ruloff; my brother Marbury puts the question, what did Ruloff and Luis tell you; he said Luis didn't tell him anything.

Mr. MARBURY. He said the conversation took place in Luis's presence; what did Ruloff say; did he explain to you for what purpose you were going down there to get these men; if so, tell us what it was? A. He told me he was going down to Harbor Key, and there take on a party of 100 men.

Q. What party? A. A party of Cubans, an expeditional party with their arms and ammunition. I went there, and instead of 100 men I found 53 extra.

COURT. You mean 153 men altogether? A. Yes, sir, altogether. The original party was to have been 100, that had been the "George W. Child's" party; she had made a failure and landed them back, and I took them along with this party.

Q. The "George W. Childs" was another vessel? A. Yes, sir; she made a failure a month before that.

Q. And did not land her party? A. No, sir.

Q. And you had to take that party for him? A. Yes, sir.

Q. Now, tell us about these men whom you shipped, 150 of them? A. 153, and they were commanded by Ruloff and General Sanchez and Gen. Roderguiz and Col. Castello and several more; I can't remember the names.

Q. Mr. Owens wants you to name these officers over again. A. General Ruloff was commander, and Sanchez and Roderguiz and General Castello, and I don't remember the others.

Q. You say General Ruloff was commander of the whole party? A. Yes, sir; the whole party.

Q. How do you know he was in command; how did you find out he was in command? A. Everybody obeyed his orders.

Q. What title did they give him? A. They all called him general.

Q. Was there anybody—any subordinate officers under him? A. Yes, sir.

Q. Did they exercise any command over the men? A. Yes, sir; there was an officer of the day appointed every day.

Q. How were these men dressed? A. They were dressed vari-

ous; some had a kind of white linen suits on, about 20 or 30 of them; not a white linen, but a dirty linen.

Q. It was white once? A. It was white once, and the others were dressed in all sorts of shapes, but they all had Cuban badges on their hats, or on their elbow.

Q. What is a Cuban badge? A. One small flag.

Q. Did they have any arms? A. Yes, sir.

Q. What kind of arms? A. Well, about 600; I can't tell you the exact quantity of stuff, because I didn't count them.

Q. In the first place, I want to know whether they carried arms on their persons? A. The officer of the day, he always carried his machete and revolver.

Q. Did these men have any arms in their hands, or strapped about them, when they came aboard the vessel? A. Yes, sir.

Q. What kind of arms? A. They all came aboard with rifles, or something else; all the arms that came aboard, came loose; there was nothing in boxes.

Q. The men had them in their hands? A. What they didn't have in their hands was left in the bottom of the boats and then passed them up over the side.

Q. Did they bring any ammunition? A. Yes, sir.

Q. What kind of ammunition? A. Cartridges in boxes.

Q. How many cartridges, do you know? A. Maybe 200,000; maybe more, maybe less.

Q. Did they have any other kind of ammunition, and where were they? A. Six cans containing dynamite, 100 pounds each.

Q. Where did they put the dynamite? A. Down in the hold on top of the coal; General Ruloff was very nervous about that dynamite.

Q. General Ruloff was very nervous about that dynamite, you say? A. Yes, sir.

Q. What sort of a looking man was this General Ruloff? A. Well, he was a full-faced man; rather ruddy-looking man, with a bald pate in front, and a kind of goatee and mustache, and blinking eyes.

Q. He had that nervous blinking of the eyes? A. Yes, sir.

Q. Did he have that all the time? A. Always.

Q. The kind of man that you would recognize easily? A. Yes, sir.

Q. Did these men whom you shipped on this voyage—that is to say, your crew—know the nature of the expedition upon which they were going? A. Not from here; they did not.

Q. Not when they started; they did not know you were going to take aboard all that dynamite? A. No, sir.

Q. After you got these men aboard, where did Roloff come on board? A. Here in Baltimore.

Q. He started with you from Baltimore? A. He went all the way with me.

Q. In what capacity did Roloff ship? A. Oh, he simply shipped aboard as passenger.

Q. Under what name? A. Miller.

Q. He shipped as a passenger, under the name of Miller. A. He was on no ship's papers.

Q. Did he do any work? A. No, sir.

Q. Among other things that you mention as having procured here for this vessel at Baltimore, before you started, is shoes; how many shoes did you get? A. A hundred pairs, at least; I believe there were a hundred pairs.

Q. What did you do with these shoes? A. They were distributed to the men before they went ashore.

Q. What men? A. The expedition.

Q. The men you shipped at Harbor Key? A. Harbor Key—yes, sir.

Q. Did Luis and Roloff know that you had these shoes? A. They bought them.

Q. They did? Luis and Roloff bought the shoes? A. Yes, sir.

Q. Do you know from whom they bought them? A. No, sir.

Q. What sort of weather did you have on the voyage, Captain? A. First rate.

Q. You did not have anything to shake that dynamite off; explode it? A. No, sir. Well, we had a pretty strong blowing in the Carribbean Sea the last three days. It was fine weather overhead.

Q. You say this party was commanded by Roloff and by subordinate officers. What rank did the subordinate officers have? A. The colonel was the officer of the day; I don't remember his name. He was always called "Colonel." There were one or two captains besides and some other under officers.

Q. Did these various officers exercise command over the men? A. Yes, sir.

Q. Did they have any drilling on board? A. No, sir; no room for that.

Q. I suppose you did not have a very large space. Did you succeed in landing the party? A. I did.

Q. At what point did you land them? A. Ri Della Becow, fifteen miles east of Trinidad.

Q. In what province? A. Santa Clara.

By the COURT:

Q. In the Island of Cuba? A. Yes, sir.

By Mr. MARBURY:

Q. Do you mean the Island of Trinidad, or just the town? A. The town of Trinidad.

(Mr. Marbury exhibited a map to the witness.)

Mr. OWENS. Where did you get the map?

Mr. MARBURY. If there is any objection to the map, we will not use it.

Mr. OWENS. I understand you got it from the Spanish Legation.

Mr. MARBURY. I don't know where we got it; I just found it on the table, but if you have got a better map, I would be glad to have you produce it.

The COURT. (To Mr. Owens.) Is it yours?

Mr. OWENS. No, sir; it came from the Spanish Legation, I understand. That is all I know about it.

Mr. LEE. This is a map published by a man in Philadelphia, named Smith.

Mr. MARBURY. If you have any objection to the map, just show us where it is wrong in any way and we will be very glad to withdraw it.

By the COURT:

Q. Are you yourself familiar with the Island of Cuba? Have you been there frequently? A. Oh, yes, your honor.

Q. You have been there frequently? A. Yes, sir.

Q. Can you point out on that map the place where you landed? A. I can.

(The map was exhibited to the witness.)

Mr. LEE. There is the Province of Santa Clara, and there is Trinidad, right down there (indicating).

The WITNESS. Here is Trinidad. I can't tell as well by this map as by a chart.

Mr. MARBURY. No; I suppose not.

The WITNESS. It would be about there (indicating on the map).

Mr. MARBURY. It is on the south coast of Cuba, about the center of the island, and a little towards the west end. That is not material, however; one part is as good as another, so far as that is concerned.

Mr. OWENS. Of course if you offer that map, you offer it for everything that there is in there.

Mr. MARBURY. You are perfectly at liberty to use it for anything you desire.

By Mr. MARBURY:

Q. When did you arrive at Trinidad, or at this point—I cannot remember the name of it—where you landed these men? A. I arrived on the edge of the bank at just dark. I had about six miles to go from the banks to the shore.

Q. How did you get the men to the shore? A. By three boats—rowboats.

Q. Did you get the ammunition, etc., to the shore also, in the same way? A. Yes, sir.

Q. How long did it take you to do that? A. About four hours and a half.

Q. After you got them on the shore, what did you do? A. Got up my anchor and came away.

Q. In what direction did you sail as soon as you left? A. The vessel was aground all the time I was discharging, about 200 feet from the shore. It took me about a half hour to get her afloat.

By the COURT:

Q. You say from the shore—do you mean the coast or the bank? A. Aground on the mud bank.

By Mr. MARBURY:

Q. Did you learn from Roloff how long those men had been on that island before you took them off? A. Oh, a month.

Mr. OWENS. I object to that, may it please your honor.

By Mr. MARBURY:

Q. When you started from Santa Clara, for what point did you sail? A. For Progresso.

Q. Progresso is in Mexico, I understand? A. Yucatan; yes, sir —Mexico.

Q. Did you go to Progresso? A. I did, sir.

Q. How long did you remain there? A. Twenty-four hours.

Q. Did you have any communication with New York after you got to Progresso?

Mr. OWENS. May it please your honor, I respectfully submit that even if there is a charge here of conspiracy to do an act, what he did after the final culmination and settlement of that alleged conspiracy is not evidence in the case at all.

Mr. MARBURY. I want to show the correspondence between him and his confederate here after he went there, and the disposition that was made of the vessel, and all. The letters will speak for themselves. What we offer—of course we cannot prove it all at once—but what we propose to prove, if your honor pleases, is that this very traverser, the defendant here, after the vessel got to Progreso, opened correspondence with Captain Hudson; and I desire to offer in evidence his letters and telegrams relating to this very expedition, relating to this very vessel, and couched in such language as strongly tends to prove the truth of what Captain Hudson has testified to, and constituting corroborative evidence of the strongest character. It does not make any difference whether this happened before or happened afterwards; it is simply proof of admission on the part of Luis himself. I do not now offer anything from Roloff; I do not believe we have anything from Roloff; but what we want

to offer is the correspondence between Captain Hudson and Luis after the expedition was over, and relating to future expeditions.

The COURT. Not the declaration of some other person?

Mr. MARBURY. No, sir; not at all. On the contrary, we propose to offer the declarations of the traverser here present, Luis himself.

Mr. OWENS. Suppose that is so, may it please your honor; suppose, as my brother Marbury says, he has in his possession certain correspondence, certain letters written by Dr. Luis after the whole alleged project had been completed; I take it that the best evidence of that is the fact of the existence of the letters themselves.

Mr. MARBURY. Oh, yes, of course.

Mr. OWENS. Now, therefore, may it please your honor, if he wants to proceed in the way indicated, certainly this man cannot testify to it. The question as to what the legal effect of those letters will be will probably come up when they are offered.

Mr. MARBURY. That is what I think. I have not gone any further than to ask him the simple question as to whether he had any correspondence——

The COURT. I understand your objection to be this: Of course, while an alleged conspiracy is in progress, and evidence has been submitted tending to prove the fact of the conspiracy, if the jury find it was a conspiracy, the sayings and doings and declarations of each person alleged to be a member of it are evidence against all the others; but I understand your objection to be that after the object of the conspiracy is effected, that relationship does not any longer exist which makes each bound by the acts and declarations of the others.

Mr. OWENS. That is exactly our position.

The COURT. As I understand, the offer of the district attorney is to prove the declarations of the party now on trial as binding him, so that it does not depend upon the doctrine of the implied agency between the parties, but it rests upon his individual action.

Mr. OWENS. May it please your honor, I would like to make myself perfectly plain. I do not wish to take up the time of the court at all, but the question I understood my brother Marbury to ask was: "After this was all done, did you have any communication with Dr. Luis? What did you do after that was all done?" Now, I say that is clearly inadmissible.

The COURT. As against Luis?

Mr. OWENS. As against Dr. Luis. What he did after the act was accomplished is inadmissible as against him.

Now, if the district attorney has any papers in his possession in which, as he says, there are admissions by Dr. Luis, the objection would properly come at the time they are offered; but I am talking now about the question he asks this witness.

The COURT. I think it is admissible. Anything that he can prove to have been the act or the declaration of Luis himself is admissible against him, even after the purpose of the expedition or

conspiracy, or whatever it was, was effected. Before that time, before the consummation of the purpose of the conspiracy, if the jury find it was a conspiracy, of course the acts of each one and the declarations of each one are binding upon them all. After it is over, the declarations or acts of any one of them are evidence against him. I will hear the testimony and see whether it is proper.

By Mr. MARBURY:

Q. You say you were at Progreso only twenty-four hours? A. Just about, sir.

By the COURT:

Q. What did you do there? A. Went there to clear for New Orleans.

By Mr. MARBURY:

Q. Did you have any communication with Dr. Luis while you were there? A. I sent a telegram, written off by Roloff, in cipher.

By the COURT:

Q. To whom? A. To Smith.

Mr. OWENS. The best evidence of that, may it please your honor, is the original telegram.

Mr. MARBURY. Well, we cannot prove the contents of it unless we have it; that is all there is about that.

By Mr. MARBURY:

Q. You say you went there to clear for New Orleans. Did you sail for New Orleans from there? A. Yes, sir.

Q. What time did you arrive at New Orleans? A. August 4th. We laid in quarantine three days previous to August 4th.

Q. You got to the quarantine on the 4th? A. No; arrived at the city on the 4th.

Q. How long did you remain there? A. Myself?

Q. Yes; how long did you remain there?

Mr. OWENS. In order that we may have the affirmative ruling of the court on the question, I move your honor to strike out all of that portion of the witness's testimony which refers to his acts subsequently to the alleged landing of the party on the coast of Cuba.

The COURT. I cannot tell whether it is connected with the case or not in the present state of the proof. What is the purpose of the offer?

Mr. MARBURY. The purpose of the offer, if your honor please, is this: We have already offered evidence tending to show that the expedition was agreed upon in New York between Smith, Luis, Roloff and Hudson, and that in pursuance of the arrangement, or the agreement, or, as we charge it, the conspiracy entered into in New York, they came on to Baltimore, purchased the vessel, sup-

plied her with provisions and coal, and equipped her in every way for this voyage, and then Roloff and Hudson started off and got down to Harbor Key and took on the expedition, and carried them over to Cuba. And we propose to show now that after they landed this expedition, Hudson sailed for New Orleans, and as soon as he got to New Orleans he reported to New York; reported to Luis what the situation was, and had correspondence with Luis as to what should be done with reference to paying off the men and disposing of the vessel, and that Luis came on to New Orleans, met him there, and there made the arrangements for the disposition of the vessel. I believe the vessel was sold at New Orleans, disposed of there. This is all just in furtherance of the same plan. I recognize perfectly well that after the act had been completed, after the alleged act was done—it may be assumed, at any rate, that the admissions of one of the conspirators, or the acts of one of the conspirators subsequently, might not be binding upon others; might not be regarded as the acts of others. But here is a case where the individual person on trial is the man who did the act that we want to prove. It is like any other case. The question is whether he authorized this expedition—whether, as Captain Hudson says, it was done in furtherance of the agreement had with him.

Now, the best way in the world to prove that is to show that after it was done he recognized the fact that it had been done by his orders, under his directions, and in pursuance of an agreement with him, and took measures to keep it secret; took measures to hide what he had done, to guard himself against discovery, to dispose of and to hide the evidences of the act, and to get away with the vessel—that he did, in other words, exactly as any man ordinarily does after he has committed a crime, takes such measures as his prudence dictates to hide them.

The COURT. You expect to prove that the traverser came on to New Orleans?

Mr. MARBURY. Yes, sir; that he came on to New Orleans himself and met Captain Hudson there, as well as carried on correspondence with him.

The COURT. I think it is admissible.

Mr. JOHNSON. The correspondence is not admissible unless produced.

Mr. MARBURY. Oh, of course it is not unless we produced it.

Mr. OWENS. I note an exception to the ruling.

The COURT. I have not yet made a ruling on any specific question.

(And thereupon, at 12:45 o'clock p. m., the court took a recess until 1:30 o'clock p. m.)

AFTER RECESS.

CAPTAIN J. M. HUDSON resumed the witness-stand for further direct-examination.

Mr. MARBURY. Before proceeding with the examination of this witness on the line which we had just begun when the court adjourned for recess, I will ask your honor to make a ruling on an offer which I propose to make with a view to knowing exactly the scope which this testimony may be allowed to take.

Your honor has ruled that we may offer in evidence the correspondence between Captain Hudson and the traverser here present, Dr. Luis, relating to this expedition, which took place after the expedition had been landed and was carried on thereafter, because it constitutes simply corroborative evidence, and practically constitutes evidence of admission on the part of the traverser. It is admissible, in any case.

Now, we propose to offer also in evidence—there are not many of them, it is true, and they are not very important, and do not go very far, yet they constitute a part of the transaction, and for that reason we think it proper that they should be in, and they may be of more consequence as we get on than now appears—the correspondence with Smith also—that is to say, the communications and telegrams and letters, one or two of them, which the witness received from Smith after his arrival in New Orleans, relating to this matter, and giving him orders and instructions as to the disposition of the vessel, and matters of that kind.

The theory upon which we want to offer that evidence is this: In order to convict a man of the charge of conspiracy, the jury must be satisfied of the guilt of some other person besides himself. One single individual cannot be guilty of a conspiracy. We must show that other persons besides Luis were in this conspiracy. And in proof of it we have already offered evidence to show that Roloff was in it, and we offered some evidence to show that Smith was in it. But we are entitled to offer all the evidence we have, as to all the people whom we have been able to discover who were in this conspiracy, because that is a necessary part of the Government's proof. We do not have to try them all together. That is perfectly well settled. One of them can be tried after the other is dead. And while the jury can only convict one, because there is only one before them, and they cannot try a man who is not present, yet they must be satisfied of the guilt of the others before they can convict the man on trial. Therefore, any evidence tending to show the guilt of the others is necessarily relevant to the case, and important; it may be essential.

Suppose, for instance, we did not have the evidence which we have been able to produce of the guilt of Roloff, and suppose that we had no evidence except as against Smith; it would be absolutely

essential to the Government's case to prove that Smith was guilty; and no better evidence could be adduced than the correspondence which will be produced in court, the letters between him and the other members of the conspiracy.

Therefore, we desire to offer in evidence—and we ask your honor to rule on our offer—not only the letters of Luis to Hudson, but also one or two letters and telegrams from Smith to Hudson, sent after the landing of the expedition—all acts done in furtherance of the conspiracy. The other side admit, of course, that anything that Smith did or said in furtherance of the conspiracy prior to its accomplishment would be admissible. Now, we say, on independent ground, independently of the other reason which I have just suggested, that he may do acts after the landing of the expedition which are in furtherance of the conspiracy. A conspiracy to violate a law of the United States involves the doing of a good many things. It is a part of the plan, of course, to bring the vessel off safely. It is a part of the conspiracy, not only to land the troops, but to get the vessel away, and escape the consequences of it. And it seems to me that the acts done after the landing of the vessel are just as much the acts of all the conspirators as those which were done before, because they constituted a part of the original and general plan. They are part of the things that they agreed to do. The whole scheme would be nothing like as successful if the parties are caught as it would be if they are not; and it is one of the most important parts of their conspiracy to escape the consequences of it.

We offer it as independent proof, however, in any event; we offer it as a part of the proof of conspiracy. We offer the correspondence to prove that Smith was in the scheme, as corroborative of the witness's testimony, in order to establish the necessary fact that there was some other person guilty besides Luis. We offer that, and we think it tends to prove that directly.

Mr. OWENS. May it please your honor, before replying to the argument of my brother with reference to this offer to prove, I want to call your honor's attention to what I fear does not properly appear on the record—that before the adjournment of the court for recess I made a motion to strike out all the testimony of Captain Hudson relating to the facts that occurred subsequently to the landing, or the alleged landing, of the expedition. I understand your honor overruled that motion.

Mr. MARBURY. No; he said he had not ruled on any specific——

Mr. OWENS. That was my impression; and in order that the record may be perfect, I ask your honor to let the stenographer read his notes and see that the case is as it really happened; because this comes in before Mr. Marbury's offer. Your honor, as I understood, overruled it, and I want, your honor understands, to note an exception to that overruling of the motion. And I would like the

stenographer to read that portion before recess and see if I am not correct.

The COURT. To what testimony does your motion refer?

Mr. OWENS. I made a motion in open court, may it please your honor, that your honor should strike out all of the testimony of Captain Hudson which referred to any acts or transactions with reference to his connection with the defendants in this conspiracy from the time of the alleged landing of the expedition.

(The stenographer read as follows:)

"In order that we may have the affirmative ruling of the court on the question, I move your honor to strike out all of that portion of the witness's testimony which refers to his acts subsequently to the alleged landing of the party on the coast of Cuba."

Mr. OWENS. I understand your honor to overrule that motion.

The COURT. I do.

Mr. OWENS. We note an exception. Now, I understand that the offer made by my brother in this case is that he shall offer in evidence here certain letters. Is not that so, Mr. Marbury?

Mr. MARBURY. Yes.

Mr. OWENS. From Mr. John T. Smith, otherwise known as J. T. Smith, directed to this witness, after the alleged landing of the expedition in Cuba? If your honor will recall the testimony—and I think I state it accurately—it was that Mr. Hudson met Mr. Smith and Mr. Smith told him he wanted to buy a boat, and asked him to go and look for the boat.

Now, that is all the testimony that connects Mr. Smith in any way whatever with this enterprise. Mr. Smith had nothing more to do with it except to take them to Mr. Holmes' office, and there they found the steamer "Woodall"—at least they found Mr. Holmes, with the agent who had the power of sale of the steamer; and after that Mr. Smith dropped out of the matter entirely, dropped out of the whole transaction.

Now, may it please your honor, it is sought here to produce a letter from Mr. Smith, not for the purpose of proving Mr. Smith's connection with this enterprise, but for the purpose of incriminating the defendant in this case by reason of some admissions made by Mr. Smith in a letter written by him. I take it that that letter was written after the whole alleged enterprise was over, and I take it that any declarations or admissions or statements made by one of several parties to an alleged conspiracy after the purposes or the conspiracy had either been accomplished or had proved unsuccessful would not be testimony proper to go to the jury when another of the alleged conspirators is upon trial.

I call your honor's attention to the case of Logan *vs.* The United States, in 144 U. S. The case begins at page 263. I read from the head note in that case. These people were indicted for conspiracy, and the court says that—

"Upon an indictment for conspiracy, acts or declarations of one

conspirator, made after the conspiracy has ended, or not in furtherance of the conspiracy, are not admissible in evidence against the other conspirators."

Mr. MARBURY. What were the facts in that case?

Mr. OWENS. Do you want me to read the whole case?

"Four indictments, numbered in the record 33, 34, 35, and 36, on Sections 5508 and 5509 of the Revised Statutes, . . . were returned by the grand jury at January Term, 1890, of the District Court for the Northern District of Texas, at Dallas, in that district, against Eugene Logan, William Williams, Verna Wilkerson and Clinton Rutherford, for conspiracy to injure and oppress the citizens of the United States in the free exercise of a right secured to them by the Constitution and laws of the United States and for murder committed in the prosecution of the conspiracy, and were forthwith transmitted to the circuit court."

Those were the facts of the case. In the opinion of the Supreme Court, on page 308, is the following:

"8. The court went too far in admitting testimony on the general question of conspiracy.

"Doubtless, as in all cases of conspiracy, the act of one conspirator in the prosecution of the enterprise is considered the act of all, and is evidence against all, . . . but only those acts and declarations are admissible under this rule which are done and made while the conspiracy is pending and in furtherance of its object. After the conspiracy has come to an end, whether by success or by failure, the admissions of one conspirator, by way of narrative of past facts, are not admissible in evidence against the others. . . . Tested by this rule, it is quite clear that the defendants on trial could not be affected by the admissions made by others of the alleged conspirators after the conspiracy had ended by the attack on the prisoners, the killing of two of them and the dispersion of the mob. There is no evidence in the record tending to show that the conspiracy continued after that time."

What was the conspiracy in this case, may it please your honor, as it is alleged? The conspiracy in this case, as set out in the indictment, is this:

(Here counsel read from the indictment.)

That is one count. Then the other count alleges that they did these certain acts; and the evidence shows, as far as Captain Hudson is concerned, that the expedition was landed on the island of Cuba. Then, may it please your honor, the entire object and purpose of this whole conspiracy, if it be true as alleged, had been entirely accomplished; and now my friend comes here and seeks to prove by subsequent statements, letters, correspondence, telegrams, the people whom he alleges were interested in this enterprise, that this was a conspiracy to do the act. Why, may it please your

honor, it seems to me that the case which I have read you of Logan, in 144 U. S., clearly makes it impossible for such evidence to be offered. And the reason of the case is quite clear. There sits a man to-day who says he is one of the alleged conspirators. For the purpose of saving himself, and putting himself in a position where he himself cannot be properly prosecuted, he brings in all these other people, and says: "I am not the only man that did this thing; there were others interested in it, and I want to show you that." I take it, may it please your honor, that under that decision, and under the real reason of the law, there cannot be any such testimony offered in the case.

Mr. MARBURY. I think, may it please the court, that authority does exclude the proof offered; and I would not take the risk of putting it in. That it excludes the evidence with relation to Smith so far as it tends to show conspiracy seems to be clear. The point I made, outside of that, however, was that the evidence might be permitted, not for the purpose of proving the guilt of Luis—and the jury should be so instructed, that the admissions made by Smith cannot be considered as tending to prove that Luis had actually violated this law, but they might be allowed to go in evidence to prove a separate matter, to prove the guilt of Smith himself. No matter how well satisfied the jury may be of the fact that Luis did violate the law, or did take measures to secure a violation of this statute, unless it can be shown that it was done in conjunction with somebody else, that somebody else was guilty also, it does not constitute the crime of conspiracy. It might be proof of another crime —that is to say, the crime charged in the indictment which is not now on trial—but it would not constitute the crime of conspiracy. Therefore we have, as an independent part of the Government's case, to prove the guilt of other people, and Smith is one of them; and if we could prove that he confessed his guilt, he being one of the parties indicted—if we could prove that—that would be one way to establish the fact that he was engaged in this conspiracy to violate this law. I think the authority is clear, and it seems to cover the point, as suggested by counsel on the other side; it seems to be clearly to the effect that the admissions of Smith or of anybody else, Roloff or any one else, made after the expedition had been landed and the object of the conspiracy had been accomplished, would not be admissible against the traverser. I would only like your honor to pass upon the question as to whether that would not be admissible against the other men themselves.

Mr. OWENS. They are not on trial here.

Mr. MARBURY. That does not make any difference; we have got to prove their guilt. You cannot convict a man of conspiracy unless you prove that more than one man was engaged in it. One man cannot conspire.

The COURT. For the present I shall exclude it, and I will consider it more maturely.

Mr. MARBURY. Very well; we may renew the offer at a later stage.

By Mr. MARBURY:

Q. We will confine ourselves, therefore, Captain, to what took place between you and Dr. Luis. After you got to New Orleans, when did you next see Dr. Luis? I want to prove the fact that he came to New Orleans, and what took place between them.

Mr. OWENS. I do not know whether that could possible be admissible in this case.

The COURT. I will admit it, subject to exception, and strike it out afterwards if it is found not to be proper.

By Mr. MARBURY:

Q. When did you next see Luis? A. The 7th of August.

Q. Where did you see him? A. At New Orleans.

Q. Did he come on to New Orleans? A. He did.

Q. Did he know that you were there? A. He did.

Q. How did he know? A. He knew that I was there from my telegrams and letters when I arrived.

Q. Then he came on to meet you there? A. Yes, sir.

Q. What took place there? A. He bought the money to pay the crew off.

Q. Do you mean the crew of the "Woodall"? A. Yes, sir.

Q. How much was it? A. About $2,000.

Q. He got there on the 7th? A. On the 7th.

Q. Did he pay the crew off? A. I paid the crew off, before the shipping commissioner.

Q. Were the crew discharged there? A. They were.

By the COURT:

Q. With what money did you pay them? A. With United States money.

Q. Where did you get it? A. From Dr. Luis.

Mr. MARBURY. He said Luis brought him the money.

By Mr. MARBURY:

Q. Did Luis pay or cause to be paid anything more than the regular pay of the crew?

Mr. OWENS. I object.

The COURT. I think it is admissible.

Mr. OWENS. I note an exception.

Mr. MARBURY. Why do you object?

Mr. OWENS. I object to it for the reason that this has nothing to do with the transaction at all. The transaction is over and gone.

Mr. MARBURY. I understand the court to have ruled on that, and that this testimony all goes in subject to exception. You can make your motion later to strike it all out.

Mr. OWENS. But I do not want it in.

The COURT. It must come in subject to exception. I am not able to rule upon it at this time.

By Mr. MARBURY:

Q. Captain, I ask you this: Did Luis pay the crew the regular wages, or did he pay them anything additional to the regular pay?

Mr. OWENS. I object to that, because the evidence is that he paid the crew.

The COURT. He must state how it was done. That is a matter of testimony. Proceed.

Mr. OWENS. We note an exception.

By Mr. MARBURY:

Q. Go ahead, Captain. A. I paid the crew the regular wages, and gave to Mr. Wight, of New Orleans, $50 each to be paid to each man after they got away on the train.

Q. What was that for? A. Extra money.

Q. By whose direction was it paid? A. By mine in the first place, and agreed to by the others afterward.

Q. Agreed to by what others? A. Luis, and also Roloff.

Q. Where did you get the money with which to pay them? A. From Dr. Luis.

Q. Did he know you were going to give it to them? A. Yes, sir.

Q. He knew you were going to give them this extra money? A. Yes, sir.

Q. What object would there be in giving them extra money? A. For extra services, extra risks.

Q. Did you pay them this extra money directly yourself? A. No; Mr. Wight.

Q. But who gave it to Mr. Wight for that purpose? A. I gave it to Mr. Wight.

Q. This crew that you shipped thought they were just going down to Progresso on an ordinary trading voyage? Well, they might and might not; I don't know.

Q. Did any of them make any fuss when they found out where you were going? A. No, sir; they didn't have a chance.

Q. No, I suppose not, with 150 armed men on board. What became of the ship "Woodall"?

Mr. OWEN. It is understood that all this is subject to exception.

Mr. MARBURY. Yes. A. That's rather a long story.

By Mr. MARBURY:

Q. You had better tell that just as it happened. How long did Luis remain in New Orleans? You say he got there on the 7th. A. He got there on the 7th and stayed there until about the 25th of August, maybe.

Q. Did you have any correspondence with him after he left? A. Yes, sir.

Q. That will fix the date, probably. A. Maybe; yes.

Q. Look at this letter, which is dated November 23rd, 1895, and see in whose handwriting it is.

Mr. OWENS. With reference to this, may it please your honor, while I am perfectly aware that there is not usually any great risk in allowing matters to go to a jury which your honor may afterwards instruct them they should strike out, still I would ask that your honor will, before permitting these letters to be read to the jury, finally determine the question of their admissibility. I will hand them to your honor, if your honor would like to see them.

(The papers referred to was handed to the court.)

The COURT (after examination). I think those are admissible.

Mr. OWENS. Subject to our exception, of course.

By Mr. MARBURY:

Q. Captain, just look at these letters and see if you recognize the handwriting, and from whom you received them. A. They are in Dr. Luis's handwriting.

Q. Where were you when you received those letters? A. In New Orleans.

Q. Did they come in the usual course of mail? A. Yes, sir.

Mr. MARBURY. Gentlemen, I will read the letters. The first one is as follows:

"NEW YORK, August 23, '95.

"MY DEAR CAPTAIN:

"I arrived yesterday very tired after being very sick in my way up. I have seen my people yesterday and to-day.

"I think I will be successful in fixing everything all right. I will know better to-morrow morning and will write to you again.

"Just keep very quiet, and try as much as you can that the money you have to ask to pay everything will be as little as possible—and will be much better if you ask it by letter explaining all.—

"I will keep you well posted—

"Don't forget to send my letters—

"Do not see that man as I don't think we will sell—

"My regards to the engineer—

"Yours truly

"JOHN LUCCAS.

"596 Columbus Ave."

By Mr. MARBURY:

Q. To what did he have reference in saying, "Don't see that man, as I don't think we will sell"? A. A man there was talking

about wanting a vessel of about that size. The doctor knew who he was, and wrote to me to call and see him. The vessel drew too much water for the Mexican coast, and he didn't want her, and that ended the transaction.

Q. What vessel are you talking of now?

A. The "James Woodall."

Mr. MARBURY. The next letter is dated "New York, August 28." The first one was dated the 23d.

"NEW YORK, August 28, 1895.

"MY DEAR CAPTAIN:

"We have every reason to believe that the 'saucy,' as you call her, is under suspicion"——

Q. What does he mean by "The 'saucy'"?

A. The "James Woodall."

Q. That is the name you gave her?

A. That is the name I gave her myself.

Q. "We have every reason to believe that the 'saucy,' as you call her, is under suspicion, and as matters are now in a very important state so that increased care must be exercised for the present, we do not know whether it will be best to wait until the cloud blows away or sell this and get another in its place."

Had there been anything in the newspapers about this expedition?

A. Yes, sir.

Q. To what extent had it been published or noted in the newspapers?

A. What date is that?

Q. This is the 28th of August.

A. Oh, the newspaper articles appeared almost right away.

Q. And he says:

"Care must be exercised; for the present we do not know whether it will be best to wait until the cloud blows away or sell this and get another in its place."

That is the vessel.

"Of course, we understand that another may have to be put into better condition to compare with this, but safety is now the principal object. Under the circumstances, you will see that all repairs and improvements should immediately cease until we have decided exactly what to do. In case we sell we will, of course, want a new one, and you might keep your eyes open. I send you 500 dollars to-day and will send you soon the balance.

"Of course, you will, under the circumstances, keep as few of crew as possible. I will look here that you are posted as to all that may come up and will write to you as soon as there is anything new——

"Yours truly,

"JOHN LUCCAS."

The next is without date.

"DEAR CAPTAIN:

"I send you the official letter as it has been ordered to me.

"I will write you again to-morrow—and be sure that I will look for you as long as I am in——

"Yours truly,

"J. J. LUIS.

"I send money in name of Woodward, because I think will save time."

Q. Where were you at the time you received this last letter? A. In New Orleans.

Q. In New Orleans still? A. Yes, sir.

Q. And this one is signed "J. J. Luis." Sometimes he signs them "Luccas," sometimes "Luis?" A. That enclosure came in the official letter.

Q. Where is the official letter? A. You have it before you. It is called the official letter.

The COURT. Have you the letter there that you call the "official letter?"

Mr. MARBURY. I do not find it here.

By Mr. MARBURY:

Q. Captain, do you find any letter there which you call the official letter? A. You have it there.

Q. Who signed the official letter? A. Luccas.

Q. See if this is the letter (exhibiting paper to witness). A. Please allow me to see the last letter you read. (The paper was handed to witness.) A. That (indicating) came enclosed in this.

Q. It did? A. Yes, sir.

Q. Is this Luis' handwriting also? A. Yes, sir.

Mr. MARBURY. I will read that, then. That is part of this letter.

Mr. JOHNSON. What is the official letter?

Mr. MARBURY. That is the letter which was enclosed in the one last read.

The WITNESS. Yes, sir.

Mr. JOHNSON. Why does he call it "official?"

Mr. MARBURY. He calls it official because it is headed, "*Partido Revolucionario Cubano Delegacion,*" whatever that is—I believe it means the Cuban Revolutionary Party Delegation. The letter is as follows:

"PARTIDO REVOLUCIONARIO CUBANO DELEGACION,

"NEW YORK, Sept. 12, 1895.

"Captain J. M. HUDSON:

"DEAR SIR: As I stated you in my previous letter we are bound to sell the sauce, and as the agent for the house, that have taken charge of that here is, Mr. G. C. Preot, Lawyer—I have been notified to

communicate with you, so that you see that gentleman there and agree to what he order. Your salaries, as I told you are paid here the same that you $500 gratification. The balance of the money that you owe there will also be paid faithfully. As for yourself, as soon as the sauce is sold, come North, and you will remain on our employ and given a chance on the first opportunity.

"Yours truly,

"JOHN LUCCAS."

Q. What does he mean by the "$500 gratification?" A. Extra money, for the risk on the voyage.

Q. Who agreed to pay that? A. Dr. Luis.

Q. Was anybody else party to the agreement besides Luis? A. My agreement was with Dr. Luis as the agent of the other party.

Q. What other party? A. Whoever they were, I don't know.

Q. "Your salaries, as I told you, are paid here," etc. "The balance of the money that you owe there will also be paid faithfully." What money did you owe there, in New Orleans? A. There was $500 owing on machinery, and there was a check sent down there in part payment of the $500, and that was accepted, and then there was some $500 or $600 more due.

Q. Then he goes on to say:

"As for yourself, as soon as the sauce is sold come North and you will remain on our employ and given a chance on the first opportunity.

"Yours truly,

"JOHN LUCCAS."

A. Well, that letter is in answer to No. 3 report.

The COURT. Whose handwriting is that?

Mr. MARBURY. He says it is in the handwriting of Luis. They are evidently all in the same handwriting.

By Mr. MARBURY:

Q. Then here is the other one. Is that in his handwriting, too? It appears to be the same. A. No, sir; I don't know.

Q. One is signed there "Dr. Lucas." A. I don't know who that was signed by. That came enclosed shortly after the first of January, in connection with the "Commodore." That letter is in answer to No. 3 report.

Q. I will just let you identify them all together. Just pick out those that are in Luis' handwriting. Is that (exhibiting paper) in Luis' handwriting? A. Yes, sir.

Q. Look at that one, and see what that is. Is that Luis' handwriting (exhibiting another paper to witness)? A. Yes, sir.

Q. How is that (exhibiting another paper)? A. The same, sir.

Q. How is that (exhibiting another paper)? A. That is the same, sir.

Q. And that one (exhibiting another paper)? A. Yes, sir.

Q. This is in somebody else's writing. Is that (exhibiting to witness another paper) Dr. Luis's handwriting? A. Yes, sir.

Mr. MARBURY. I will just read the papers identified by the witness in the order of their dates.

"NEW YORK, September 1st, '95.

"MY DEAR CAPTAIN:

"Yours received"——

Q. Had you written to him before that? You had certainly written to him before that, although you do not seem to have a copy of your letter. A. No, sir; I don't keep no copies.

Mr. MARBURY (reading). "I suppose you have received already my previous letter with the 500 dollars.

"I hope to send you the balance this week.

"I have no news as I am doing nothing at present, but hope that we will do something soon.

"I know nothing about the man you ask me—and so far they have not decided about selling the 'saucie,' but as soon as something come up I will notify you.

"I suppose you have seen in the papers the failure at Wilmington——"

Q. What does he mean by "the failure at Wilmington?"

Mr. OWENS. I object to that.

The COURT. He can answer if he knows.

Mr. OWENS. Can he answer what Dr. Luis meant by "the failure at Wilmington?"

The COURT. He can state that if he knows; yes.

Mr. OWENS. We note an exception.

By Mr. MARBURY:

Q. Do you know what he meant by "the failure at Wilmington?" A. Only by reputation.

Q. What had taken place at Wilmington?

Mr. OWENS. I object to that. He has no positive knowledge what happened at Wilmington; he does not know what Dr. Luis referred to, even if that was written by Dr. Luis.

By Mr. MARBURY:

Q. "I suppose you have seen in the papers the failure at Wilmington"—was there anything in the papers about anything that occurred at Wilmington? If so, what was it?

Mr. OWENS. The paper would be the best evidence of that, not his recollection of what was in it; because he might state the contents improperly; he might draw inferences from them, and doubtless would, under the circumstances.

Mr. MARBURY. We have the clipping here.

Mr. OWENS. We object to the clipping.

The COURT. Let him first answer the question as to whether he had seen anything in the papers about the failure at Wilmington. A. Yes, your honor.

By Mr. MARBURY:

Q. What was it that had occurred at Wilmington—what had you seen in the papers?

Mr. OWENS. Do I understand your honor to admit this testimony?

The COURT. Yes.

Mr. OWENS. Then we note an exception to all of it. A. It was Gen. Carillo's expedition, which was nipped in the bud while trying to get away from Philadelphia.

Q. That was called the Wilmington failure? A. And they went through the court at Wilmington, Delaware; that I know.

Mr. MARBURY (reading). "I had nothing to do in that matter, as somebody else took charge of that in my absence. I have done nothing about the mate waiting to see how the thing will come up.

"My regards to the engineer and oblige.

"Yours truly,

"JOHN LUCCAS."

The next date that I find here is September 7th.

"N. YORK, Sept. 7, '95.

"MY DEAR CAPTAIN:

"Yours received. I am very sorry to see that we are doing nothing at present.

"There has been here some failures in things under somebody else charge—and besides, under no circumstances, no one will use the sauci, not only for what has been said, but because they say it is very slow and they must have something faster—I will explain better when I see you.

"They have told me that you must see them to Mr. G. C. Preot, a lawyer at No. 5 Carondelet St., who is in charge of selling the steamer for a house who has advanced them money, so with this party we cannot do what we spoke about, but you can go and see by yourself that man that I told you could buy it, and maybe you can do something getting a better offer.

"You will be always on our employ as long as I have something to do—and they have promised so to me—so we will see what we can do.

"Yours truly,

"JOHN LUCCAS."

The next is September 9th, 1895:

"NEW YORK, Sept. 9, '95.

"MY DEAR CAPTAIN:

"Yours of the 5th received. I am sorry to see that things are not going entirely to our satisfaction "——

Gentlemen, have you got his letter of the 5th?

Mr. OWENS. We deny every word of it; we never heard of these things.

Mr. MARBURY. You have not got it?

Mr. OWENS. We do not know anything about it; never heard of these things until they were talked about here to-day.

Mr. MARBURY. Never heard anything of these letters?

Mr. OWENS. Never in my life.

Mr. MARBURY. Maybe your client knows something about them. We will give you notice to produce the original letter from Captain Hudson, which is referred to in this letter from Mr. Luis, and to which this letter is an answer.

Mr. OWENS. Counsel states that we have no such letter.

Mr. MARBURY. There is no such letter in existence; very well; we will read the copy.

By Mr. MARBURY:

Q. It says: "Yours of the 5th received." Do you keep copies of any of your letters? A. Not all of them.

Q. Did you keep copies of any of them? A. Yes, sir; there is No. 3 report before you, on the table.

Q. What do you mean by "No. 3 report?" A. In the form of a letter, on one sheet of paper.

Q. A report of what? A. It had reference to my treatment in New Orleans, and my complaint that my family did not receive the money; you have it there now.

Q. You mean you refer to this paper as report No. 3? A. Yes, sir.

Q. Look at that and see in whose handwriting it is (exhibiting paper to witness). A. The official letter, I believe, is in answer to this.

Mr. OWENS. It seems to me it is hardly within the proper province of the examination of the witness for him to show him a memorandum and say: "Is this what you wrote?"

The WITNESS. That is my writing.

Mr. OWENS. We have no such letter, and, as far as I know, we have never received any such letter. Mr. Marbury has a perfect right (subject to the exception which I already have with reference to all this testimony) to ask the witness to state what he wrote; but I submit the witness cannot be aided by this memorandum, which he says is a copy, until he has shown that he has sufficient individual recollection of what he said to justify him in identifying

that as a copy of the original correspondence. That is my view with reference to it.

Mr. MARBURY. Perhaps we can obviate that objection by asking him what he remembers about it.

Mr. OWENS. Just ask him what he wrote. Of course this is all going in, as I understand, subject to exception.

The COURT. Oh, I understand that. What is that paper you have there?

Mr. MARBURY. It is a report which he made to these people to New York, to the traverser, Dr. Luis. It is a copy of a letter which Captain Hudson himself wrote.

The COURT. In whose handwriting is the copy?

Mr. MARBURY. In his own handwriting. Mr. Owens objects, and wants him to see if he can tell what was in it before he reads it. I have no objection to taking that course.

Mr. OWENS. Yes; I want him to tell us, if he knows, what he did say.

The COURT. Is not the proper way to show him the paper and ask him if that is a copy which he made of the letter which he sent?

Mr. OWENS. I do not wish to take up the time of the court, as your honor knows, in making a senseless objection; but in this case here is a man who puts himself in the position of a man escaping justice, and he comes here with a paper and says, "Here is what I did, to show exactly my position in the matter." Why, that paper could very well have been manufactured——

Mr. MARBURY. I say I am willing to do what you desire, if the court will permit me; I am willing to ask him the very question you want asked.

Mr. OWENS. I object to the whole thing. My exception covers it.

The COURT. Proceed, then, gentlemen.

By Mr. MARBURY:

Q. Captain, you made a report which you call your third report. What did you report, as near as you recollect? A. I can't give it *verbatim*.

Q. I do not expect you to give it *verbatim*, of course. A. It is complaining about my treatment in New Orleans.

Q. What complaint did you make? A. And in that I think I mention, I think Cuban credit will be jeopardized if the bills are not paid. I also make complaint and say, "Doctor, I am not complaining, but I find from my family that my family has not received the money that should have been paid over to them." There is some other things that I don't remember.

Mr. MARBURY. That seems to be a pretty good identification. Now, look at the paper itself. You have stated it is in your handwriting. State whether that is a copy of the letter which you sent. A. That is in my handwriting, and a copy of the one I sent.

Mr. MARBURY. I will read it to the jury, and they can judge whether your identification is satisfactory.

By the COURT:

Q. To whom did you send it? A. To Dr. Luis.
Q. By mail? A. By mail; yes, sir.
Mr. MARBURY. The paper is as follows:

"Report 3rd.

"COSMOPOLITAN HOTEL,
"September 5th, 1895.

"MY DEAR DOCTOR:

"I received your letter of the 1st inst. to-day, and contents noted. The 500 dollar check was returned, as no doubt you will find out before this reaches you, so the next time you send a remittance you had better send it to my credit. The machine man is getting terribly impatient at the delay in paying his bill and hints at 'libelling' the vessel. In such case, the expense will be increased considerable, and besides that it will injure *Cuban credit* for all time to come, as none will do a hands turn unless cash is deposited beforehand, and indeed, I have a hard time trying to explain the delay, and have been told to my face that they would neither take my word nor that of my '*backers*.' That is just about the situation now, so you may judge what I have to contend against. Besides all this, I will want some money very soon to meet current expenses, and the sooner I receive it the better—for us you know, it is pay out all the time.

"There is another matter to which I have to call your attention, and that is, I received a letter from Mrs. Hudson yesterday, in which it is stated that my month's wages for August last has not been paid over to her, and now here is September due also. I do not remind you of this, Doctor, in a complaining way, as very likely you may not be able to help it just now, but, the poor captain, *the one who has stood the brunt of the battle to carry the thing through to a success* 'should not to be forgotten.' You remember our agreement, that you was to send my pay home in advance on the first of every month, and my gratification money also, but neither has been sent. I have kept faith and performed my duty in a conscientious manner, and will continue to do so so long as faith is kept with me, and no power on earth shall ever swerve me from doing my duty.

"As you say, I read about the Wilmington affair, 'the Philadelphia failure,' and that following on the heels of the 'G. W. Childs' and other failures, should teach the 'Junta' that there is one individual in their service who does not make any blunders. It is

not every captain that understands this business, or who cares to undertake the risk. So my friend—

"Wishing for your welfare I still remain your most obedient.

"Respectfully,

"CAPTAIN J. M. HUDSON,

"Str. 'James Woodall.'

"P. S.—I prefer that you take the money yourself to 117 Clarkson *street, Flatbush.*"

The COURT. You introduce that as a letter to which a reply was sent, as I understand you?

Mr. MARBURY. Yes, sir.

Mr. OWENS. As a copy?

Mr. MARBURY. Of course it is a copy. The original, you say, is not in existence. The letter in reply to that is the letter dated New York, September 9th, 1895. It is as follows:

"NEW YORK, Sept. 9, '95.

"MY DEAR CAPTAIN:

"Yours of the 5th received—I am sorry to see that things are not going entirely to our satisfaction, but I can help it—The principal reasons why they want to sell the 'sauci'—are in the first place because they say after all that have been said in the papers is very dangerous, and in the second place because they say it dont go the 12 miles an hour we said and nothing near to that—Well, if you have any chance to see that man and make a good sale as we spoke about, I think you have a good chance to do it.

"In regard to your salary—I gave the money myself to Mr. Smith for the month of August—I saw him to-day and he says he will take it down to her to-morrow—This month pay I will get it by the end of the week. And your $500 extra I guarantee you that you have it here sure.

"In regard to the money for the machinery, I went to the bank to-day also, and they say that the 500 dollars have been collected already by Woodward, Wright & Co., the balance I will send it soon, but will be better that there are no more expenses to be paid for that 'saucy.'

"I may have something to do here, and if we need somebody you will be the one and I will send for you and if not the first chance will be for you, well understood that you will continue on our employ after the 'saucy' is sold, as long as I have any influence and I have it so far.

"A little patience and we will be all right.

"Yours truly,

"JOHN LUCCAS."

The next letter is dated September 26th, 1895, and is as follows:

"N. Y., Sept. 26, '95.

"Capt. J. M. HUDSON:

"MY DEAR CAPTAIN: I hope that you received my telegram to-day in time to be at the custom-house to-day as *you* promised yesterday.

There is no use to try any more, and we are only working against ourselves, so if you did not go to-day—you must go to-morrow and settle that matter as we cannot do any more, neither Mr. Estrada himself——"

Q. Who is Mr. Estrada? A. Thomas Estrada Palma.

Q. Who is Thomas Estrada Palma? A. The so-called "Cuban Delegate."

Q. That is, the delegate from the "Republic of Cuba"? A. That is, if there is one.

Mr. MARBURY (reading). "The steamer was bought confidentially under your name and we must act fairly and submit to the orders they give.

"Yours truly,

"JOHN LUCCAS."

The other one is dated February 21st, 1896. It is as follows:

"Captain J. M. HUDSON:

"DEAR CAPTAIN: As I told you, I cannot do anything until Mr. Estrada comes. He will be here, I think, on Monday. About the 'Commodore,' you are mistaken. I am very sorry, but it is not my fault.

"Yours truly,

"JOHN LUCCAS."

Mr. MARBURY. It is written "Com." here; I do not know whether that stands for "Commodore," or what? A. Commodore.

Q. What did that mean? A. That was in reference to going to Wilmington, N. C., to take the men to the "Commodore."

Q. What was that—another vessel there? A. Yes, sir; she was already loading with arms at Wilmington, N. C., and had been seized and held up.

Q. You were to take command of her? A. Yes, sir.

Q. When you and Luis and Roloff were discussing the arrangements for this expedition, did you or not have any agreement with reference to what should become of the vessel after the expedition had been landed? A. What do you mean?

Q. About the "Woodall;" what was to become of her? There is a lot of talk here about selling her. A. Well, that is an afterclap. The fact of the matter is that it was agreed between Roloff and

Luis over there in the hotel that the vessel was to be mine, especially after making one or two more successful trips; and, furthermore, it was agreed between Roloff—he said he expected to be secretary of war; that I was to be commodore—Roloff was to be secretary of war and I was to be commodore of the Cuban navy, when they had one. Roloff expected to be secretary of war when he got there, and I was to have been retained in the service as commodore of the Cuban navy when they had any ships, or to run the blockade with the "James M. Woodall" continuously, as may be ordered.

Q. That understanding was had between you and Roloff and Luis? A. Yes, sir.

Q. At the Cosmopolitan Hotel? A. Yes, sir.

Q. That was before the expedition started? A. Yes, sir; and at the end of the war, I was to be well taken care of.

Q. By a grateful republic? A. By a grateful republic.

Q. Republics are sometimes ungrateful, Captain. A. So it seems, sir.

Q. While we are on that subject, Captain, about the meetings at the hotel, where would Roloff and Luis be during the daytime, while you were purchasing these supplies? Did they go with you on any occasion? A. No, sir.

Q. Would you see anything of them during the day? A. Well, sometimes, when I came to my lunch at noon. Otherwise I was generally occupied until night. I had all I could do to attend to.

Q. When the night would come, what would take place? A. There would be a meeting up in the room.

Q. And what would be done at those meetings? A. Well, we talked over what was being done, and what may be required; and of course, in the list of those stores and provisions I was preparing for a second trip; after landing Roloff and his party, then I was to come back to Cedar Keys to take Col. Callazo(?) and his party; but the length of the time that I was off on the cruise, and the extraordinary quantity of people on board during the voyage, and the consumption of coal, would not warrant us to go there, to make a second trip, without going somewhere to replenish. And so, from Progreso, as agreed upon between Roloff, before he went ashore, and myself, I was to go to New Orleans, and fit out, repair the vessel, and be there handy to make the other trip. I forwarded the cipher telegram written by Roloff from Progreso, stating——

Mr. OWENS. I object to the contents.

By Mr. MARBURY:

Q. Have you got the original here? A. I think so; I saw it this morning. I am under the impression that I saw it this morning.

Q. Look at this paper, and see if you identify it. See in whose

handwriting it is. A. This (indicating first paper, written in purple) is Roloff's own handwriting. That (indicating second and smaller paper in purple) is Roloff's own handwriting. This (indicating last paper) is my explanation of it, by the signal-book—the Commercial Code of Signals book.

Mr. OWENS. May it please your honor, according to the testimony of Captain Hudson in this case, these papers were given to him with directions on the part of General Roloff to send this telegram.

Mr. MARBURY. They were given him before he left Progreso, I understand.

Mr. OWENS. Oh, no; they were given him down there after he reached Cuba.

By Mr. OWENS:

Q. When did you get that? A. This (indicating second small paper) was written on the afternoon before they landed. This (indicating first paper) was written five minutes before he went on shore. He promised to give me the list of the leaders before, and he neglected it until that time.

By Mr. LEE:

Q. And he gave you this just before he went on shore? A. About five minutes before he left the ship.

By Mr. MARBURY:

Q. What leaders do you mean? A. The leaders of the expedition.

Mr. OWENS. Now, may it please your honor, here is a paper which reads as follows: Carlos Roloff, Serafin Sanchez, J. M. Rodriguez, J. Riogelio Castillo, Fermin Valdes Dominguez, E. Loinaz del Castillo and Raimunde Sanchez. Here is a cipher which is handed the witness, and which he says he got from Roloff. It has no meaning to any of us. I do not think that even if this cipher is admissible in evidence as a piece of paper given him by Carlos Roloff, he can prove, in connection with that paper, anything more than the paper shows—just exactly what that paper is as it stands there. He can say Mr. Carlos Roloff gave him that paper.

Mr. MARBURY. Let the court understand exactly what the offer is. We introduce these as two separate matters entirely. One paper, as counsel has already read—it is not necessary to read it any more, I suppose—is simply a list of the leaders of the expedition which the witness testifies Roloff had promised to give him earlier, but had neglected to give him until just before he landed in Cuba. It is in Roloff's handwriting, and gives a list of the officers and leaders of the expedition.

That is one matter. The other two papers are these: the first

is a scrap of paper containing a lot of words in the handwriting of Roloff——

Mr. OWENS. His alleged handwriting.

Mr. MARBURY. Well, he testifies it is in the handwriting of Roloff, and it contains a lot of words which have no meaning to us without explanation—"Dom mom jox Ran Kon Vox Bor Por Lor Rox." Several of the words end in "x," as your honor will see. Now, we propose to prove by this witness that that is a cipher telegram that Roloff, as I understand him, prepared for him before the expedition landed, and gave to him with instructions to wire that after he got to Progreso——

The WITNESS. That is correct, sir.

By the COURT:

Q. To whom were you to send it? A. It was sent to Smith, and then to Benjamin F. Gary, the treasurer.

By Mr. OWENS:

Q. Sent to Smith? A. John T. Smith.

By Mr. MARBURY:

Q. It was a telegram which was prepared by Roloff before the object of the expedition had been effected? A. Yes, sir.

Mr. MARBURY. Before the object of the expedition had been fully accomplished by the landing of the troops. Of course, so far as the reading of the cipher is concerned, we offer to show the meaning of this cipher by reference to the International Code of Signals, upon which it is based, translated by that: It will speak for itself; all you have got to do is to turn to the signals.

Mr. OWENS. How do you know he was using the International Code of Signals?

Mr. MARBURY. Of course that must be proved; but it will prove itself if you examine it.

The COURT. I think it is admissible.

Mr. OWENS. We note an exception, of course.

By Mr. MARBURY:

Q. Have you got here the International Code of Signals?

The COURT. He has not testified yet with regard to the paper.

Mr. MARBURY. No, he has not testified fully on that point.

By Mr. MARBURY:

Q. You have testified as to the list of the leaders. That is in Roloff's handwriting, you say?

The COURT. The leaders of what?

Mr. MARBURY. The leaders of the expedition.

The COURT. What do you say about that, Captain Hudson?

By Mr. MARBURY:

Q. The court wants to know what you testified about.

By the COURT:

Q. What did you ask Roloff for? A. I asked him for a list, so I would know for my own information.

Q. A list of whom? A. Of the leaders.

Q. Of what? A. Of the expedition.

Q. What expedition; the expedition you were landing? A. Yes, sir; your honor; simply I got it as a remembrance, not dreaming that it should ever be called in question in court.

Q. And he gave you that paper? A. He did, your honor; five minutes before he left the ship.

Mr. MARBURY. The names here are Carloss Roloff, Serafin Sanchez, J. M. Rodriguez——

The WITNESS. The three generals.

Q. They were generals, were they. A. Yes, sir; the three generals.

Q. And J. Riogelio Castillo? A. He was colonel.

Q. Was he? A. Yes, sir.

Q. And then there is another one—Fermin Valdes Dominguez? A. I think he was the doctor.

Q. He was the doctor? A. I ain't sure.

Q. E. Loinaz del Castillo? A. That is a brother of the other Castillo.

Q. And Raimunde Sanchez? A. I think he was a brother of Gen. Sanchez.

Q. They had plenty of officers? A. All of them.

Q. Roloff gave you this before he landed, before he went ashore? A. Yes, sir.

Q. And you took it away with you. Then what is this scrap of paper which I have here? A. That is the cipher telegram, by the International Code.

Q. In whose handwriting are those words? A. That is Roloff's—the same pencil and the same handwriting, as you notice.

Q. You say it is in Roloff's handwriting; when did he write it? A. The afternoon before we landed, when there was time.

Q. How did he come to write it? What made it—— A. So as to telegraph to New York.

Mr. OWENS. I cannot hear what he says.

By Mr. MARBURY:

Q. Just tell us all about it; what was the occasion of his writing this? A. That was to inform him at New York that the expedition had been landed, that I had gone to New Orleans. You have the answer there.

Mr. OWENS. That was a telegram, may it please your honor, addressed to J. T. Smith, and not to Dr. Luis.

Mr. MARBURY. I understand that.

By Mr. MARBURY:

Q. Did you send that? A. I did, from Progreso.

Q. Can you translate it? A. I can.

Q. What is the nature of the cipher? Upon what is it based? A. It is based upon the International Code of Signals book.

Q. Is this (exhibiting book to witness) the International Code of Signals book? A. Yes, sir.

Q. Where did you get that? A. That is mine.

Q. It belongs to you, does it? A. Yes, sir; I have had it for many years.

Mr. MARBURY. And these words here are of course perfectly meaningless to anybody who is not familiar with the cipher.

Mr. OWENS. Did he see Gen. Roloff write that?

By Mr. MARBURY:

Q. Did you see Gen. Roloff write this? A. I did.

Q. "Dom mom jox Ran Kon Vox Bor Por Lor Rox"—what does that mean? A. Give me the signal-book, and I will turn them over to you. You take the first letters of each sentence.

Q. You take the first letters of each word, do you? A. Yes, sir.

Q. The first is "D"—"Dom." A. You will find the explanation on this sheet of paper. You take the first letters of each word.

Q. It would be "D M J?" A. Yes, sir.

Q. "D M J" signifies what? Turn to "D M J" there. A. It is on page 18, Part I.

Mr. LEE. He has it all translated out.

Mr. MARBURY. Yes; but I just want him to give an illustration of what he means.

By Mr. MARBURY:

Q. "D M J"—what is it? A. There it is (indicating) "disembarking."

Q. Is this the translation which you made from that code (exhibiting paper to witness)? A. Yes, sir.

Q. "Disembarked and gone to New Orleans." That is the telegram, is it? A. Yes, sir.

Q. What became of the "Woodall?" A. She was lost afterwards.

Q. I know; but what did you do with her—did you sell her? A. I transferred her in the New York custom-house after the doctor writing me to New Orleans to come on.

Q. He wrote for you to come on to New York, and you went on to New York? A. Yes, sir.

Q. And you transferred the "Woodall" there? A. Yes, sir; according to that letter.

Q. By their direction? A. Yes, sir.

Q. To whom did you transfer her? A. Christopher Terrence, I think the name was.

Q. At the custom-house? A. New York; yes, sir.

Q. She stood, according to these letters, in your name in the first instance? A. Yes, sir.

By the COURT:

Q. I understand when she was purchased here from Mr. Woodall the title was put in your name? A. Yes, your honor.

By Mr. MARBURY:

Q. Registered in your name; and that is all you know about it. How much was she sold for; do you know? A. It is stipulated on the bill of sale $15,000.

Mr. JOHNSON. It seems to me that is a great latitude, may it please your honor.

By the COURT:

Q. Did you get the money? A. Not a cent paid to me, your honor, except my pay at the time, and which was refused until I failed to transfer that vessel. The boys in the custom house were gathering around while I was doing it—"Don't you do it, Captain"——

The COURT. Oh, that is not proper.

Q. But that would not give you your pay until you executed the transfer of the vessel? A. No, sir; not the extra money nor my wages.

Mr. JOHNSON. I think you were very wise, indeed.

(The direct examination of this witness having been concluded, the court, at 3 o'clock p. m., adjourned until Wednesday morning at 10 o'clock a. m.)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES
vs.
J. J. LUIS.

BALTIMORE, March 24, 1897.

Second Day.

Pursuant to adjournment, the court resumed its session at 10 o'clock this morning.

CAPTAIN HUDSON, recalled for further direct examination.

Q. In looking over the testimony I find that there are one or two questions which I neglected to ask you yesterday. When did you first learn and when did the others, that is, Luis and Roloff, first learn, as far as you know, that this body of men was at Florida Key, or Harbor Key, ready for transportation to Cuba? Did you know, when you started from Baltimore, that this body of men was on the Key waiting for transportation to Cuba? A. Yes, sir.

Q. What I want to know is, what Luis and Roloff knew about that? A. They knew all about that.

Mr. OWENS. I object to that; how could he tell what Luis and Roloff knew about it?

COURT. Ask him how he knew it.

Q. (Mr. MARBURY.) How did you know about it? A. Through Roloff.

Q. Where did you find it out? A. In the City Hotel.

Q. Tell us what was said, in substance in your conferences at night with Luis and Roloff on that subject? A. Roloff, in the first place, said that he had some schooner that was to come down there, but it disappointed him, and he came north. Whether he brought the money with him to buy the vessel or not, I don't know. At all events I waited there until he purchased the vessel. He said that he remained in Jersey City until he came on to Baltimore. That vessel was bought for the express purpose of going there and carrying those men. He said there was about a hundred men, as near as he could tell, and he bought one hundred pairs of shoes on purpose to supply those men.

Q. I am talking about only what took place when Luis was present. In your conversation with reference to this body of men, how were they described or spoken of? A. They named it "the expedition." Sometimes he would say "my party" or "my men."

Q. Who would describe them as "my party" or "my men"? A. Roloff.

Q. That was in the conversation at the hotel? A. Yes, sir.

Q. Tell us whether or not it was understood for what purpose these men were going to Cuba? A. They were going there to fight.

Q. They were not going on a summer excursion? A. No; not on a picnic.

Q. Do you know who provided these men with arms, or how they came to be provided with arms? A. No, sir; I don't know that.

Q. Do you know whether or not they were an armed body? A. Yes, sir.

Q. Do you know whether Luis knew that? A. I believe he did.

Q. From what source did you get the knowledge that they were an armed body? A. From Roloff.

Q. In conversations with him? A. Yes; he said the men had been waiting on the island for a month or more.

Q. And you got from him the information that they were armed men? A. Yes; and he was hurrying them up every day with a sharp stick, to get away as soon as he could.

Cross-examination.

Q. (Gen. JOHNSON.) Where were you born? A. In New York.

Q. How old are you? A. 64.

Q. How long have you been a sailor? A. For 50 years.

Q. Then you went on the water when you were 14 years old? A. Yes, sir.

Q. Did you have much advantage, in the way of schooling, before you went on the water? A. Well, I am pretty much a self-educated man.

Q. Can you write pretty well? A. There is a sample of it (indicating).

Q. Do you speak Spanish? A. Very little, sir.

Q. Can you understand Spanish when it is spoken? A. Sometimes, if they talk slow.

Q. When they talk rapidly? A. No, I can't always catch on.

Q. Are you in the habit of writing many letters? A. Not usually, unless I am in some kind of business where I have to.

Q. Then you do not write letters except on business? A. Very seldom; I don't write love letters now.

Q. Did you not say yesterday that you never heard about this expedition until Roloff and you got off in the steamer and he told you about it when you were on the water—did you know where you were going when you started? A. I did not until I got here, and that is what I said, if I remember right.

Q. I have an idea that you said you did not know where you were going until you got on the water, when Roloff told you there were a body of men down there? A. I don't understand you.

Q. I understood you to say yesterday that you did not know

where you were going or what you were going for until Roloff told you on the day after you started? A. I knew what I was going to do, but I didn't know where I was going. I had an idea, as I said yesterday, that I was going to operate from the Spanish main.

Q. I think you said it took you 8 days to get down to Harbor Keys? A. Seven days.

Q. Was not that very slow time? A. It was.

Q. Was the vessel so inferior? A. The vessel was reported to me to be the fastest boat on the bay; but it seems that my engineer could not get the speed out of her.

Q. At any rate, it took you 7 days to get down there? A. Yes, sir.

Q. You said yesterday that when you got these men on board at Harbor Keys, they came on with arms, all of them carrying revolvers. Did you say that? A. I said they came on board with each man carrying something; it might have been a musket or a machète; and what they did not have in their hands, they had in the bottom of the little boats, in the hold, I should say, and when they got alongside they were passed up.

Q. When you got down there, you, as a matter of course, were on the lookout for Spanish cruisers, were you not? A. Yes, sir.

Q. What time did you get to the Keys? A. Not until the evening of the 24th of July.

Q. At what hour of the day? A. I passed in between the Keys at or just about dark. At noon I was 40 miles south, and no land in sight. I timed her by going slow and stopping her so as to pass in between the Keys about dark. I then had six miles over shoal water before I got to the shore.

Q. When you got there you had six miles of shoal water, and you say you ran on a mud bank? A. Yes, sir; but I didn't exactly run on a mud bank. After I made the light at Tunez, I, of course, kept her right in shore as near as I could to the mouth of the Telebokara river; then I went east along the shore toward Tunez; General Sanchez appeared to know something about the locality and wanted me to go further. I told him that was far enough, or I would get on to that mud bank. Then I dropped my anchor, and before she could swing with the current, she ran her bow on to the mud bank. The port anchor laid away on the port quarter, and kept her from going any further up; and there she stuck, and I commenced landing.

Q. How long did it take you to land? A. As near as I can remember, I commenced about half-past eight; the first boat was sent ashore with General Sanchez and Roderiguez, and about a dozen men to reconnoitre; they sent word back that it was all right, and then I commenced to land; at half-past one in the morning I was through.

Q. You got all your provisions off? A. I gave them two days' rations each.

Q. And you kept the rest of the provisions on your boat? A. Yes, sir.

Q. Did you get all the arms off? A. Yes, sir; everything.

Q. How many boat loads do you suppose there were? A. I couldn't tell you.

Q. You were running for four hours and a half? A. Yes; they must have made about 20 trips. I would not allow them to go deep loaded. They went light loaded, so that they could run further up on the beach and save time by that.

Q. It took you about 20 minutes to run a boat in? A. They were about 200 feet from the shore. The boats came and went as fast as they could.

Q. They were within two hundred feet of the shore, with the ship on a mud bank, and two anchors out? A. One anchor.

Q. I thought you said two anchors; that was rather a ticklish point, was it not? A. She ran ahead of her anchor.

Q. That was rather an anxious time, was it not? A. I didn't mind it. I was smoking a cigar all the time.

Q. I have smoked a cigar in some pretty curious places; it is very good for the nerves. Don't you think that you thought it a little curious in that dark place with the boat aground? A. I didn't feel half so curious there as I do here to-day.

Q. Then while you were in this precarious situation, when a Spanish gunboat might have come along and sent a shell right through you at any minute, you asked General Roloff, just before he landed, to give you a list of names? A. Yes, sir.

Q. Five minutes before it landed? A. I had asked him for it a couple of days before and he had deferred it until the last five minutes before he left.

Q. Then you had been after him for two days before that time to get this list? A. Excuse me, sir; I asked him once for it, and that is all.

Q. What did you want with it? A. I said: "General, please give me a list of our party on board; I would like to know who my friends are."

Q. There was no other reason than that? A. That was all, sir.

Q. That was the only reason for asking for it? A. Yes, sir.

Q. There were three or four Cuban generals there? A. Yes, sir, General Roderigeuz and Sanchez, and Roloff, and Colonel Castillo—he is a Columbian. I had met him 25 years before that on the "Hornet." So I knew him.

Q. What was the "Hornet?" A. A side-wheeler.

Q. Was she a filibusterer? A. She was at that time.

Q. Twenty-five years ago would bring you back to what time? A. To 1870.

Q. What was the "Hornet" doing down there then? There was no war in Cuba in 1867. A. I said in 1870. The war began in 1868. The "Hornet" was fitted out as a man-of-war, under the command of Brigadier-General Higgins, who had formerly been in the United States Navy. Instead of going to Cuba, we got short of coal and went into Wilmington. After that I took her.

Q. Tell me about this telegram that General Roloff gave you in cipher; when did he give you that? A. On the afternoon before we landed.

Q. The list of names you got the last thing that night? A. The very last thing.

Q. That was two o'clock at night? A. Yes, sir; it was nearly half past one.

Q. You were so anxious to know who your friends were that you wanted their names; you could not part with them without getting a list of their names, and you saved that paper very carefully? A. I did.

Q. Did you save the original telegram that Roloff gave you? A. I did, sir; for the reason that I thought it might be misunderstood, and it was, by the return answer which arrived two days after I sailed for New Orleans.

Q. How did you get it? A. It was returned to New York to Smith, and Smith mailed it to me, together with another letter from the clerk of the commission house, asking for $100 for port charges which had not been charged. Smith forwarded the letter on to me at New Orleans—I refer in that letter to Dr. Luis.

Q. You preserved this telegram then for the purpose of preventing its being misunderstood? A. In case it might be misunderstood, so that I could produce it, and show that I was right. I never had any other motive in preserving that or any other telegram.

Q. You are in the habit of keeping your letters and papers pretty carefully? A. I am.

Q. Have you got any other papers and letters at home? A. No, sir.

Q. Have you got any in your possession here? A. No, sir; no other letters.

Q. You have got no other correspondence with anybody? A. No.

Mr. MARBURY. There is a letter here from Smith, if you want that.

Q. (Mr. JOHNSON.) I want to know why these things were so carefully preserved; that is what I am after. A. I can show you records that I have kept for 40 years.

Q. A list of names is a curious thing for you to keep. A. I can show you, at home, a list of the "Hornet's" names to-day.

Q. A list of the passengers on the "Hornet?" A. Not the passengers, but the crew.

Q. What became of the "Hornet;" was she ever seized or proceeded against in the United States court? A. Yes, sir; at Wilmington.

Q. Wilmington, N. C.? A. Yes, sir.

Q. What became of her? A. She was released without fine, I believe, but she was stripped of all that was on board; that was when Commodore Higgins had her.

Q. Did you land an expedition with the "Hornet?" A. Yes, sir.

Q. How many of them? A. 62.

Q. 62 expeditions? A. 62 men.

Q. How many expeditions? A. Only one.

Q. Have you landed any other expeditions besides that on the "Hornet?" A. Not except the "Woodall."

Q. Did you ever try any others? A. I took the bark "Morning Star;" but that was a failure; that was in 1886; that was a failure through the man not being on the lookout; I dodged up and down off Annota Bay for four days; the fourth night I happened to see a steamer's light in shore; the green light was screened, but badly screened; by-and-by it turned around and I saw the red light, and then I thought it was time to get out; that was in the night time.

Q. I understood you to say that when you got back to New Orleans you met Dr. Luis there and made arrangements to sell the boat in New Orleans? A. If I could.

Q. Did you sell her? A. No, sir.

Q. Did you leave her there? A. Yes, sir.

Q. And came on to New York? A. Yes, sir.

Q. Do I understand you to say that you had an agreement with Dr. Luis that after two or three of these cruises the boat was to belong to you? A. Yes, sir.

Q. That was the contract, was it? A. Yes, sir, the verbal contract.

Q. But you never made but one trip? A. I know that; but I was willing.

Q. And under the contract you are not entitled to the "Woodall" ——? A. There was a tacit understanding that she was to be mine anyhow.

Q. Even after one expedition? A. Yes; when I first spoke to Dr Luis about it in Smith's boat shop, Smith asked the question how she should be placed, and he said, "in Captain Hudson's name;" then Smith made the remark: "Then she will be Captain Hudson's."

Q. If the vessel was to stand your name and belonged to you, why were you going to sell her in New Orleans? A. The doctor wrote to me to try and sell her if I could; that I might get a better price for her, and then I could look out for my commissions.

Q. What do you mean by commissions? A. I could take my commissions out of the sale.

Q. I don't quite understand you; you say she stood in your name and you had a property right in her; what were you going to sell her for if she belonged to you? A. I didn't want to sell her. On or about the 22d day of September, Mr. Palmer came down to Smith's office with tears in his eyes, and Dr. Luis was along with him; he begged me to transfer that boat; he said they had borrowed money which was spent on the vessel and that he was being pressed for payment, and that he was being pressed also to prevail on Captain Hudson to transfer the vessel to liquidate the debt—in the presence of Dr. Luis.

Q. You said yesterday that you had made a bargain through Smith to buy the "Woodall" for $13,000? A. I didn't make the bargain; it was Smith that made the bargain.

Q. And Smith reported it to you? A. Smith was the negotiator.

Q. And you were to charge these Cubans $15,000? A. No, sir; it was Smith.

Q. Were you not to divide the difference with Smith? A. Yes, sir; but Smith had the money.

Q. How much of it did he give to you? A. Dr. Luis came and paid Smith $15,000 on the table and Smith grabbed the money. Then Dr. Luis threw a thousand-dollar bill over to my side and said, "That is to begin with on expenses." After Dr. Luis went away Smith dealt out to me $13,000 and kept $2,000. In the first place he said that the $2,000 would be equally divided between us.

Q. Between whom? A. Smith and myself.

Q. That would be $1,000 a piece? A. Yes, sir; I told Smith I didn't like any of that kind of business. He says, "Oh pshaw, we might as well have a thousand dollars a piece out of them as anybody else." I said all right, but he pocketed the money. That night we could not change our bills, and he loaned me $30 to come on to Baltimore with. After my arrival at Progresso he called on my wife, and paid her $450, and that made $500. When I arrived home I asked him about the balance and he said, "Oh pshaw, that is divided between four of us." I said "I don't understand that." "Oh, yes, he said, you understand it perfectly;" I said, "All right, who is that four between." He says "$500 to you and $500 to me, and $500 to Palmer and $500 to Guerra."

Q. Did you know Palmer? A. Yes, sir.

Q. Don't you know that he was a poor school teacher? A. I don't know anything about him except that I knew him around there.

Q. Do you know whether, at the time he started, he was at his country school? A. I don't know anything about that. I never met him until I met him at Smith's when we were talking about the transfer of the "Woodall."

Q. You never met Palmer until after you came back from Progresso? A. No, sir.

Q. And you did not know anything about him at that time? A. No, sir.

Q. When did you have your conversation with Smith about this division of the plunder? A. He talked about it during the three or four days that he was negotiating and trying to get the price down from $15,000 to $13,000.

Q. Tell me about when it was that you knew you could get the "Woodall" for $13,000; when did Smith tell you that? A. I knew he was trying to get the price down. I think it was the day before I came on to Baltimore to examine her that the price was fixed; but whether it was fixed at the same day that I came on or not, I don't know.

Q. At the time you and Smith got the $15,000 you knew the price was $13,000? A. Yes, sir.

Q. And the understanding was that you were to get a thousand dollars apiece? A. That was his arrangement, not mine.

Q. Tell me where you got a thousand dollars to give to Woodall to send to your family. A. I never got a thousand dollars. I never got a cent from Mr. Woodall.

Q. I mean the thousand dollars you gave Woodall to send to your family. A. I never got it, sir; there is some mistake.

Q. How much did Woodall send your family? A. He never sent my family one cent, and neither did I receive one cent.

Q. You did not give Woodall a thousand dollars to send to your family before you left Baltimore? A. No, sir.

Q. Did you give him anything? A. No, sir.

Q. Let us understand about that; you knew Woodall and you were negotiating with him here. Will you tell the jury that you never gave Woodall a thousand dollars, just before you left Baltimore to go South, to send on to your family? A. I do.

Q. You never gave him anything? A. No, sir; I left money with Woodall to pay bonuses—$80 to the second engineer, and $40 each to the three firemen; that is all the money I left with Mr. Woodall.

Q. Was that money to be paid when they came back? A. Three days after sailing; it was paid to their representatives.

Q. You left money in Woodall's hands, to be paid to men named by the engineer and the firemen? A. Yes, sir.

Q. (COURT.) I understand that the engineer and the firemen went with you? A. Yes, sir.

Q. And this money was left here to be be paid to somebody after you had been out 3 days? A. Yes, your honor.

Q. (Mr. JOHNSON.) At what time did you see the Spanish consul, when you returned to New York? A. It was near the end of September.

Q. You got back to New York, as I understand you, on the 22nd of September? A. That was in New Orleans. I never saw the Spanish consul until last September.

Q. September, 1896? A. Yes, sir; you are a year ahead of time, are you not?

Q. What arrangement did you make with the Spanish consul? A. None whatever; I mentioned my case to him.

Q. What did you go to see him for? A. I found I was dropped and liable to be arrested at any moment; Roloff had been arrested on the "Lorada" case, and I expected mine following this case.

Q. Then you went to see the Spanish consul to make terms with him? A. Not exactly.

Q. What did you go to see him for? A. I told him how I had been used, but he knew all about it beforehand; I told him I was going to commence suit for breach of contract, and I asked him if he would molest me in any way if I commenced suit. He said no; to go ahead.

Q. Against whom were you proposing to bring suit? A. The suit was brought against Luis, Roloff, Palmer, Guerra and Cassada—five.

Q. For how much did you sue those parties? A. For $6,000.

Q. What was the breach of contract? A. There was pay due me at $200 a month, beginning with February until September.

Q. February, 1895, or 1896? A. February, 1896. The last payment I received from Dr. Luis was for the month of January, 1896.

Q. You received your pay regularly then up to January, 1896? A. Not regularly.

Q. You got your pay of $200 a month? A. No; $150 a month. Q. Did you not get a bonus of $500 for carrying that vessel down? A. I did.

Q. That was not paid when you came back to New York? A. That wasn't paid until I transferred the vessel in the custom-house; they wouldn't pay it.

Q. Not while you had the title to the vessel? A. No.

Q. Tell this jury what was the breach of the contract. A. I have told you.

Q. Were they to keep you in permanent employment at $150 a month? A. No; the pay I first demanded was $200 a month—the same pay that I had on the "Hornet"—and on the "Hornet" I had $1,500 bonus; I told the doctor, when I first arranged with him, that I wanted the same pay, but the doctor said: "We have not got that much money now, but if this is a success you will have what you want." The thing was a success, but I didn't get what I wanted; the doctor then placed me at $150 and a bonus of $500; I didn't agree to it, but simply submitted to it, with the expectation that when we had plenty of money I would be reimbursed.

Q. You came back to New Orleans on the 22d of September? A. I got back on the 20th, if I remember right.

Q. You were paid your regular pay from that time until January, 1896. A. Yes.

Q. You were paid your pay? A. Yes, sir; I received my pay.

Q. Up to January, 1896? A. Yes, sir.

Q. I still cannot understand where the breach of the contract was. A. Don't you understand that I had a verbal contract that I was to be paid right along in service; I was under waiting orders all that time, from January, which prevented me from taking anything else.

Q. From August, 1895? A. From January, 1896, to September, when I commenced suit.

Q. You commenced suit with the consent of the Spanish consul general; to what counsel did he send you? A. To none.

Q. Who was your counsel? A. Mr. Fessler.

Q. Whom did you see besides Mr. Fessler? A. I saw Mr. Prevost, but I can't tell what time it was; it was long after I commenced suit, somewhere about the first of January, I think, or maybe the middle of January—before I ever met Mr. Prevost.

Q. Did you go to see Stearns and Curtis? A. That is Mr. Prevost's firm.

Q. Mr. Curtis is the Assistant Secretary of the Treasury, I believe? A. I don't know anything about that.

Q. You did not see him until after you had brought suit? A. No, sir.

Q. Did you not testify in New York that you saw him first? A. No, sir.

Q. Did you not testify that you went to see the Spanish consul and asked him if you could bring suit? A. It was just before I commenced suit that I went to see the consul.

Q. Why did you go to see Mallet Prevost? A. My lawyer told me to go and see him.

Q. Why? A. He had a long list of statements there, and he had sworn evidence there, taken here in Baltimore in August, 1895—the evidence of William Lawrence and William Tester, seamen.

Q. Were they members of the crew of the "Woodall"? A. Yes, sir.

Q. They were sailors on the "Woodall?" A. Yes, sir; and that voyage was described by them as accurately as I could do it myself.

Q. Mr. Prevost then showed you these papers? A. Yes, sir; and further evidence that he had.

Q. Did Prevost send you to your lawyer? A. My lawyer told me to go to him.

Q. Did your lawyer give you any reason for sending you to another lawyer in that way? A. That is the lawyer's business.

Q. Did you not know that they were the attorneys for the Spanish Government? A. I did not until I got there; I gave them no information, if you please; I merely corroborated what information they had.

Q. Tell this jury why you made up your mind to swear yourself into the penitentiary in the way you have done here?

COURT. You must explain your question to him.

Mr. JOHNSON. He has testified here that he has committed a crime against the United States; he is, according to his own testimony, more guilty than any man in this crowd, and I want to know why he testifies in this way.

COURT. Do you mean why he gives testimony that would incriminate him or convict him?

Mr. JOHNSON. Yes; I think his testimony convicts him.

Q. (Mr. JOHNSON.) You testified yesterday that you conducted an armed expedition to Cuba: that is contrary to the law of the United States, and is punishable by a fine of not more than $10,000, and by imprisonment of not more than 3 years in the penitentiary. Why did you give that testimony? A. I object to answering that question; I have answered it already.

Q. That is a very important thing which we want to know. Why have you come here to make this exhibition of yourself, to go back on your friends, and betray your cause? A. My friends went back on me.

Mr. JOHNSON. If your honor please, I want this man to answer the question why he made up his mind to testify in this case.

Mr. MARBURY. I think he has made it pretty clear already, but we are willing that he should repeat it.

Q. (Mr. JOHNSON.) Let us have the answer. A. As I said, I went to the Spanish consul, and asked him if he would take any action if I commenced suit. I was pretty well satisfied, from what I had known, that if I had not done what I did do, I might have been arrested myself; he promised me that I should not be interfered with.

Q. Then the reason you testify here is that you have the promise of protection from the Spanish consul? A. That is what he said—those words.

Q. Explain to the jury what authority the Spanish consul has to protect you for a violation of the laws of the United States?

COURT. Do you think he can answer that question?

Mr. JOHNSON. I do not think he could. I do not think anybody could.

Q. Have you been promised immunity from prosecution by the district attorney for the United States? A. No.

Mr. MARBURY. No; he has not.

Q. Have you got any promise from the district attorney in New York? A. No, sir.

Q. Or from the Attorney General of the United States? A. No.

Q. Or anyone in authority in the United States? A. No.

Q. Your whole case, therefore, rests on your confidence in the statement of the Spanish consul general? A. I do it in the hope that for what I am doing I should not be prosecuted.

COURT. I may state to the jury that it is a fact that where a witness is used by the United States Government, and he tells the truth on the stand, the rule is that he shall not be prosecuted. The judges of the courts will not allow him to be prosecuted; they will suspend the case until proper action is taken, and will make a recommendation to the President. Witnesses who are used by the Government are not prosecuted.

Mr. JOHNSON. Then I understand your honor to say that this man is substantially protected, if he tells the truth?

COURT. He is, if he tells the truth; if the officers of the Government are satisfied that he has spoken the truth and if they use him as a witness, he cannot be prosecuted. The courts will not allow it. The executive authorities have never failed to sanction their action.

Q. (Mr. JOHNSON.) Have you had any employment since you were discharged by these Cuban people? A. I have been on waiting orders, sir.

Q. From whom? From the Junta.

Q. The Junta has not paid you anything since when? A. Since January, 1896.

That is 14 months ago? A. Yes, sir.

Q. How have you lived since that time? A. On my own money.

Q. Have you not gotten any money from the Spanish consul? A. No, sir.

Q. Have you any promise of money from the Spanish consul? A. No, sir.

Q. Have you any expectation of anything from the Spanish consul? A. All I expect is to be paid for my time.

Q. What time do you mean? A. The time I have been staying around court in New York and around here.

Q. You will get that money from the Spanish consul? A. No, sir.

Who is to pay you? A. I don't know who.

Q. By whom do you expect to be paid? A. Mr. Fessler told me I would be paid my expenses.

Q. Mr. Fessler is your counsel in New York? A. Yes, sir.

Q. Has Mr. Fessler any connection with the Spanish consul general? A. Not that I am aware of.

Q. You said that he sent you to Mallet Prevost, who is counsel for the Spanish consul general? A. I don't know anything about his business.

Q. Mr. Fessler is chief clerk in an office in New York, is he not? A. Yes, sir.

COURT. Do you mean in an attorney's office?

Mr. JOHNSON. He is a clerk in the Hydrographic Office, but I don't know exactly what that is.

Q. (Mr. JOHNSON.) You don't know anything about the Hydrographic Office? A. I do.

Q. Is Fessler a clerk there? A. Yes, sir.

Q. And therefore he is an employee of the United States Government. A. I think so.

Q. And he sent you to see Mallet Prevost? A. Yes, sir.

Q. And Mallet Prevost is a partner in the firm of Stearns & Curtis? A. I believe he is, but I never had anything to do with them.

Q. Did you make a statement to Mallet Prevost about this expedition? A. Yes, sir; I told him about it; I was simply corroborating, if you, please; he had already the sworn statements of these two I have just mentioned.

Q. Do you mean that you were simply corroborating what they said? A. Yes, sir; I could not help but do otherwise; it was told just as plain as if I had told it myself, and more so.

Q. During the time you were waiting orders in New York, from January, 1896, until September, 1896, did you go around to see the Junta; where is the Junta's office? A. I never went to their office.

Q. You never have been to their office? A. No, sir; my communications were with Dr. Luis as the agent, and, at other times, with F. G. Pierra.

Q. Explain why you were so careful to get this list of names from General Roloff just before he left the vessel on that night? A. It was himself that thought about it first; he had promised to give it to me before. The reason I asked for it was that the officers and me were good friends and they were continually in my room. I had a room 10x11, and sometimes there would be a dozen packed in that room; we were all good friends together, and I simply wanted it as a memorandum, so as to know who they were; I had no motive, never dreaming that such a thing would come up.

Q. You kept it very carefully, though, until you handed it to the district attorney here? A. I did; among my other papers.

Q. Do you know any Pinkerton detectives? A. None.

Q. You don't know that two Pinkerton detectives are here now? A. I do not.

Q. You do not know that there are two Pinkerton detectives going around after you every day?

Mr. MARBURY. I submit that has nothing to do with this case. This is a violation of the law of the United States, and if detectives are being used in ferreting out violations of the law, I do not see how it has anything to do with Captain Hudson.

Mr. JOHNSON. Suppose they are engaged by the Spanish Government to watch Captain Hudson.

COURT. He has answered the question.

Q. You say you are not aware of the fact? A. No, sir.

Q. You do not know whether it is so or not? A. I do not.

Q. (Mr. JOHNSON.) Is there anybody here with you? A. No, sir.

Q. Did no friend accompany you? A. No, sir; I came alone.

Q. You had no communication with any of the Spanish authorities before you started on this expedition, did you? A. No, sir; never in my life.

Q. Since the proposition was made by Dr. Luis, or some one representing him, to buy this boat, you did not go to any Spaniard and communicate the fact that you were going on the expedition? A. No, indeed.

Q. Did you tell anybody that you were going on the expedition, before you started for New York? A. No.

Q. Did you tell anybody in Baltimore? A. No, sir; they will all say that I kept my counsel to myself; everyone that I done business with in Baltimore.

Q. At about what time did Smith tell you that the $2,000 was to be divided into four parts? A. After I came back from New Orleans.

Q. After you came back from the expedition? A. Yes, sir.

Q. That was in September? A. Yes, sir.

Q. Are you certain that Luis paid the $15,000 to Smith in your presence? A. Am I certain?

Q. Yes. A. That Dr. Luis paid the money to Smith? Yes, sir; right in my presence.

Q. He gave $15,000 to Smith and $1,000 to you? A. Yes, sir.

Q. Where was that? A. In Smith's office, at the same time.

Q. Then what did Luis do? A. Luis was not in it. He didn't know anything about it.

Q. He knew nothing about the divide? A. No, sir; the transaction was entirely done by Smith unknown to Dr. Luis. After he handed the money over to Smith he left—probably in about half an hour. Smith wrote out a receipt for the money and handed it to the doctor, and afterwards the doctor left. At that time it was about half past five. Then after the doctor left he paid me over the $13,000 and put the other $2,000 in his vest pocket.

Q. Where is Smith's office? A. 159 South street.

Q. Did you leave that afternoon for Baltimore? A. That night.

Q. With $15,050? A. With $14,000 in thousand dollar bills.

Q. With $13,000 with which to buy the boat, and one thousand dollars with which to buy provisions? A. That was to commence on.

Q. Did you get any commission on the provisions you bought? A. I got about $50.

Q. You did not divide that with Smith, did you? A. No, sir.

Q. You said you bought from Loud & Claridge? A. Yes, sir.

Q. And they allowed you a commission of $50? A. I think it was $50, and I don't think it was more; I din't ask for that; they did well to me.

Q. Did you tell Roloff and Luis that you had this commission on purchases? A. No.

Q. You did not tell them anything about it? A. No.

Q. You put that in your pocket? A. I put that in my pocket.

Q. You left here on the 9th of July? A. On the 9th of July.

Q. How long did it take you to get out of the Capes? A. I think it was about 11 o'clock the next morning.

Q. It must have been a slow boat? A. The engineer could not make her go. She was a 12-knot boat down the bay, but he couldn't get the speed out of her.

Q. I don't understand that. A. Neither do I.

Q. If a boat can make 12 knots on the bay, why could you not make her go 12 knots? A. I don't know; I am not an engineer.

Q. Did you not testify, in New York, something about going down to the Muhares Coast? A. Yes, sir.

Q. Was that the same thing as Harbor Key? A. No, sir; that is on the coast of Yucatan.

Q. What did you go there for? A. For water.

Q. I thought you said you took some men on there? A. No, sir; I got them on at Harbor Key.

Q. How far is Harbor Key from Key West? A. As near as I can remember, without looking on the chart, it is about 25 miles north.

Q. Then you were about 125 miles from Havana? A. Not so much as that; we were about 100 miles, taking it round about.

Q. The chart says it is 100 miles from Havana to Key West? A. It is 50 miles across from Havana to Key West.

Mr. LEE. The map shows that it is 100 miles from Key West to Havana.

Q. (Mr. JOHNSON.) When you got to Harbor Island, did you come to anchor? A. Yes, sir.

Q. How long did it take you to load? A. I anchored at 10 o'clock at night on the 16th, and laid there until 6 in the morning on the 18th; I laid there 24 hours before anybody came on board; then one of the little schooners brought a party out, and had to return for the balance; that brought it up to about 6 in the morning before they all got aboard.

Q. What do you mean by saying the schooner had to return for the balance; did it have to go back to the island? A. Yes, sir; they couldn't bring them all on one load.

Q. These men came on board with all sorts of dilapidated costumes on? A. Yes.

Q. Where were you when they came on board—in the cabin or on deck? A. On deck; I am always on deck.

Q. Was there any sort of pretence of a uniform among them? A. There were quite a number of them that were dressed alike—in dirty brown Holland suits, or something of that sort; a dirty color.

Q. And it was dirty in fact, also, was it not? A. It was not exactly a white color, when it was new, I guess.

Q. You were examined before Commissioner Shields in New York? A. Yes, sir.

Q. Did you not say then that the men were not armed when they came on board? A. No, sir; I did not.

Q. You say now that they were armed with machetes and revolvers? A. They did not all have them by their side. The men would come on board with a rifle or something else, and the balance was down in the——

Q. You say these men had no uniforms on and that some of them wore dirty brown linen suits? A. Something like that.

Q. The proper suit for hot weather? A. Yes, sir.

Q. It was pretty warm down there? A. Such as you may have seen it down in Cuba yourself.

Q. People wear very light clothes there? A. Yes, sir.

Q. It is pretty warm in July? A. A little bit; everyone wore a badge.

Q. The Cuban is very fond of wearing a little flag on his hat? A. Yes, sir.

Q. A little Cuban flag? A. Yes, sir.

Q. A blue triangle with a red star in the centre? A. Yes, sir.

Q. Let us understand this distinctly; do you say that you did not testify in New York that these men did not come on board armed? A. I did not; I said that they came on board with arms in their hand. I think those were the very words that I used, and so they did.

Q. You say that the muskets and carbines, or whatever they were, came in the bottom of the boats, loose? A. Yes, sir; what they didn't have along with them were laying down in the boat.

Q. The men came there, standing up, in how many boats? A. There were two schooners.

Q. They were not row boats? A. They were about ten tons each, and they were standing packed on the decks, besides my boat came back loaded.

Q. A ten-ton schooner would carry 80 men? A. Yes, sir; but there was 150 of them.

Q. You had two ten-ton schooners? A. They are very small, sir; not much longer than that table; even then they had to stand packed on the deck.

Q. You say that there were a lot of them clothed alike in brown linen suits? A. Something of that sort.

Q. Do you know whether they were a part of the original expedition that you expected to get? A. That I don't know.

Q. Do you know whether they were people that came over from San Domingo? A. I don't know anything about that.

Q. Did you take General Roderiguez on board at Harbor Keys? A. Yes, sir.

Q. How was he dressed? A. I don't remember; General Sanchex wore a kind of a white linen jacket, with light woolen trousers.

Q. You know what the Cuban uniform is, or what they pretend to have for uniform? A. I have not seen it.

Q. Did you never see it? A. I saw it once on the "Delaware," going to Inyuagua; one of them dressed himself up in his suit, but only wore it for a very short time.

Q. The Cuban uniform is a cotton suit with a blue stripe in it, is it not? A. I don't know anything about that, sir.

Q. You testified yesterday that Gen. Roloff took command of these men as soon as they got on board. A. Yes, sir.

Q. Was there any kind of military order among them? A. They had an officer of the day every day.

Q. A new man each day? A. No, I think it was the same man.

Q. What were his duties? A. Keeping order among the men, seeing the men had their meals at the right time, and stationing men at the water cask, so that none of them would waste any fresh water.

Q. Why do you call that man the officer of the day? A. He was nothing but a policeman. A. I give it up; all I know is what General Roloff said.

Q. Of course, on board of a boat you have got to have somebody to guard your water, otherwise the men would waste it all in short order; of course that is necessary; but you say Roloff gave orders. Now, do you know enough Spanish to understand the orders he gave? A. I did not; no, sir.

Q. Of course you know that when one of these Spaniards talks, he gesticulates with his hands and arms, and goes through a lot of movements? A. Yes, sir.

Q. Therefore you could not tell whether Roloff was talking to them about fried fish, or talking to them about the kind of rations they had? A. He might have asked them to take a drink for all I know.

Q. Was there anything to drink there on board that ship? A. There was.

Q. Did Roloff let the men drink much? A. He would only take a nip once in a while.

Q. But did he allow the men to drink? A. Yes, sir; if I would give it to them.

Q. Was there not a large supply of liquor of some kind on board? A. Twenty gallons.

Q. Twenty gallons of whiskey or rum? A. Whiskey.

Q. Who dealt it out to the men? A. Well, I generally let the mate, and sometimes the cook give them a nip.

Q. How many nips a day did you give them? A. About two.

Q. One for breakfast and one for dinner? A. Yes, sir.

Q. How many did you have yourself? A. Oh, two or three.

Q. As many as you wanted? A. Yes, sir. I always take my whiskey.

Q. You say twenty gallons of whiskey lasted a hundred men for how long? It was a week—— A. Oh, that was taken from Baltimore, and it lasted until we got to New Orleans, twenty-four days. The crew had it, and sometimes the expedition would have a drink. It was as much as I could do to make it spin out until I got there.

Q. You said that you were in the habit of reporting to Roloff and Luis every evening during the time you were buying provisions for the boat? A. Yes, sir.

Q. They were at the City Hotel with you? A. Yes, sir.

Q. And you came in at night and told them what you had been doing during the day? A. Yes, sir.

Q. On what night did you first make a report in the presence of Luis. A. The first night he was there.

Q. When did he get there? A. I think it was on a Monday.

Q. When did you come down? A. Saturday morning.

Q. You left New York Friday evening—Friday night—on the midnight train? A. Yes, sir.

Q. Then you saw Luis and Roloff at the City Hotel on Monday night? A. I think Luis came first on Monday, and if I am right, I think Roloff came on Tuesday.

Q. When you made the first report to Luis, what did you tell him? A. I told him all that I had done, and what was going on.

Q. What was it? A. I can't give you the details, because I don't remember them, I had so much to do.

Q. Then you cannot tell what you told Luis in your first report? A. No, I cannot, exactly; all I know is, I reported progress.

Q. And you reported that every night? A. Yes, sir.

Q. And Roloff got down there the next day; so at the next interview, on Tuesday night, Roloff was present, too? A. Yes, sir; Roloff understood more than Dr. Luis did about the ship business.

Q. What conversation did you have with Roloff; what report did you make to Roloff and Luis, together? A. Whatever was done during the day.

Q. But what was done? A. Perhaps I might have ordered the sails to be taken to the sail loft, and had stanchions put around the vessel for awnings, and different things—ordered davits to be made for the boats, ordered awnings to be made, and a boom for the foresail and a boom for the mainsail; they were so numerous and various that I can't explain them all.

Q. Did you attend to the necessary repairs on the vessel—getting her ready for sea? A. Everything; yes, sir.

Q. And when you went to Roloff that night you told him about it, because he was acquainted with the vessel more than Luis? A. Yes, sir.

Q. Luis, then, did not have much to do with the vessel? A. Oh, he joined in, but Roloff understood more better than Luis.

Q. You do not know what your report was about? A. No, sir; I don't; it is pretty hard for me to remember the things now. I

was occupied in picking out stores and looking around for boats at other times.

Q. Is the suit in New York which you brought against Dr. Luis and Mr. Palma and Mr. Estrada still pending—undecided. A. Still pending?

Q. Is it still pending, I say? A. Yes, sir.

Q. The suit is still going on; it has never been tried? A. I don't know anything about it, sir; it has never been tried.

By Mr. OWENS:

Q. You say that on Tuesday night, when you made the second report——

The COURT. Mr. Owens it is quite apt to lead to complication for two counsel to cross-examine; it is apt to lead to going over the same ground. If there is a distinct matter about which General Johnson has not cross-examined the witness and about which you desire to ask him, I will permit it.

Mr. OWENS. No; I will accept your honor's suggestion.

Mr. JOHNSON. Yes; I will cross-examine the witness.

By Mr. JOHNSON:

Q. You cannot tell me what conversation you had with Luis on Tuesday night? A. Not particularly; no, sir.

Q. Well, generally; what was it generally? A. As I have said before, we talked over everything; and then one night Tom Collaza came there—a brother of General Collaza. Then the conversation turned on going down to Florida, on my return trip.

Q. What do you mean by your return trip? A. After I had landed Roloff and his expedition.

Q. And come back for another one? A. Come back to Cedar Keys, where his brother's party was. That was all gone over and understood.

Q. What is the man's name that you are talking about now? A. Thomas Collaza.

Q. How is it spelled—C-a-r-l-i-z-e? Give us an idea of the spelling. A. C-o-l-l-a-z-a.

Q. Mr. Collaza was then talking about employing you in another expedition, which was started after this one was accomplished?

A No, sir; he simply came there, and Dr. Luis pointed him out so that I could recognize him in future.

Q. Was that conversation in the room with Roloff about the military expedition that he had on Harbor Key? Was anything said about Harbor Key.? A. They were on Pine Key; but Harbor Key was the nearest place that I could go to.

Q. Why not Pine Key? A. the vessel couldn't go in the channel; there wasn't water enough.

Q. How far is Pine Key from the Isle of Pine? A. The Isle of

Pine is on the south coast of Cuba, a considerable distance, unless you might make a railway across Cuba.

Q. You were in the employ of the Cubans and what you might call the Cuban sympathizers in the war of 1868–'78? A. Yes, sir.

Q. And you landed frequent expeditions there, as I understand? A. Only one.

Q. How about the "Morning Star" expedition, in 1885 or 1886; did you try to get that through? A. Yes, sir; and that was a failure; that is the one I mentioned just now.

Q. Have you got any feelings for the cause now? A. Not much.

Q. You do not feel as well as you did before this expedition? A. Well, I don't think anything of it.

Q. Did you not know a lot of these people that employed you in the war of 1868 and 1878 and the people that employed you in connection with the "Morning Star?" A. I knew some of them; yes, sir.

Q. How long had you known Dr. Luis? A. Since 1886.

Q. And when Dr. Luis wanted to buy a vessel he sent for you, as I understand you to say. That was the situation, according to your story, was it not? A. That's about it.

Q. Now, give me an explanation why, after all this connection with the sympathizers with the Cubans, you should turn traitor here and come on this stand and try to send these men to the penitentiary? A. I am not a traitor, sir.

Mr. MARBURY. You can call him any name you please; the jury will be the judge. Go ahead and press that question, and he can answer it.

By Mr. JOHNSON:

Q. Give me the reason why you have turned back on your people.

Mr. MARBURY. Yes; tell why you turned back on them; that is just what we want to know.

A. In the first place, I never thought anything of Roloff; he served me a dirty trick in the spring of 1880. General Garcia was there at the time. Roloff was then a colonel. They were about that time getting up an expedition to go to Cuba, and were thinking about buying a small fifty-ton schooner. I was to look out for the schooner, and if a suitable one was found, then of course I would command her. Meanwhile these things were going on, and I was one day sitting in the office of James J. Ferris. In came Roloff, and began to negotiate about a schooner, and at the same time another captain was called in, and the detectives was placed on my track while the other thing was going on; but it fell through, and they went away on some chartered vessel; and I never thought anything of General Roloff from that day to this; and had I known that he was going to go, I would not have undertaken it. His presence in any cause is not a guarantee of good faith. He is nothing but an

agitator, and, I might say, an impostor. The fact of the matter is, he has run away from Cuba now.

Q. Where is he now? A. Looking for Smith, I expect.

Q. Where is Smith? A. Looking for Roloff.

Q. And the reason you have gone back on Luis in this matter is because Roloff played you a "dirty trick?" A. No, sir. After being promised employment by Mr. Palma and Mr. Guerra (?)—the name I mentioned before—they both promised me faithfully, if I would transfer the "Woodall," I should be kept continually in their employment; and they didn't perform the promise; and about the other part, you have already heard, I was in danger of being arrested. I have no spite against Dr. Luis.

The COURT. What did you say about arrest? A. And the second part was, I was afraid of being arrested.

The COURT. He has given the best explanation he can several times. You must leave that to his testimony.

By Mr. JOHNSON:

Q. Then you turned State's evidence because you wanted to protect yourself? A. That is it.

The COURT. He has said that; he has said he wanted to protect himself, and also gave the other reasons, that he thought he had not been treated as he expected to be.

By Mr. JOHNSON:

Q. You had been with these people for twenty years; you had risked your life with them, and gone in the most dangerous positions with them;——

Mr. MARBURY. I submit that is a matter for argument to the jury.

Mr. JOHNSON. I want to give him a chance to explain.

The COURT. He has had as many as three chances, I think. He has obviously said all he has to say on that subject.

The WITNESS. The trouble is, General, this thing is not a popular uprising.

The COURT. Oh, there is no use of going into that question.

Redirect examination

By Mr. MARBURY:

Q. As I understand you, at the time that you were told to go to see Mr. Malet Prevost, the counsel for the Spanish Government, or whom you ascertained when you got there was counsel for the Spanish Government, he had already secured the proof of this expedition by the testimony or statements of other witnesses? A. Yes, sir.

Q. And they had all the facts, and you were in danger of being arrested at any moment? A. Yes, sir.

Q. You were not the person who gave it away in the first instance? A. Indeed, no.

Mr. V. O'NEILL, a witness called and sworn on behalf of the Government, testified as follows:

By Mr. MARBURY:

Q. Where do you live? A. 1021 Forest Place.

Q. In Baltimore? A. Yes, sir.

Q. What is your business? A. Dealer in nautical instruments and adjuster of compasses.

Q. It requires, I suppose, special knowledge and skill to get a compass properly adjusted? A. Well, I should suppose so.

Q. I do not know; I never heard the expression "adjusting compasses" before; I just want to get an idea of the nature of the business. A. Well, in iron ships the compasses are not correct, and in wooden ships they are not correct if there is any iron about them, such as boilers and engines; and I am obliged to go along with the ship where I have plenty of room to turn her around, test the compasses on all the different courses, and correct them with artificial magnets.

Q. And you stay on the ship long enough to get the compasses properly adjusted? A. Until I get the compasses properly adjusted, and then I get out at the first place I can get out.

Q. On the pilot boat? A. Yes, sometimes I get off on the pilot boat.

Q. Did you have any work or employment of this kind in connection with the steamer Woodall in the summer of 1895? A. I did; yes, sir.

Q. Did you adjust the compasses for her? A. I did; yes, sir.

Q. Did you go any distance with the ship? A. I went down to about abreast of Annapolis, down a little below Sandy Point.

Q. At whose instance did you go on board of her? A. Captain Hudson's.

Q. Just tell us about how you came to do it, all you remember about it. A. Captain Hudson came in the store, and he said that he wanted to buy a chronometer; he wanted a quadrant and a compass, and he bought some few other little things connected with navigation. I asked him the condition of his compass, if he wanted it adjusted, and he presumed it was all right. However, he told me, I could go over and examine it, and see if it was all right. Well, laying alongside of the dock, I found that by raising or lowering the windows, it would alter the compass from a point to two points, on account of the iron sash weights that they had in the windows. I told him they would have to take those sash weights out; so they got a carpenter there and took the iron sash weights out and put lead weights in. And then I made a deal with him, when he got ready to sail, to accompany the boat down the river to

see if the compass was all right, or if there would be any further trouble with it. I found that the compass was—I don't remember exactly—but probably three-quarters of a point out of the way.

Q. Who was on board of the "Woodall" when you went out?

The COURT. When they started on the voyage?

Mr. MARBURY. Yes, when you started on the voyage.

A. So far as I know, outside of the crew, there was only one man, besides myself and the boatmen I took along with me, so that I could leave the vessel down below. We usually go to Cape Henry with the pilot-boat; but I got through with this job down below, and I got a small boat and took it along with me, and boatmen to row it.

Q. How much of a crew did the boat have? A. What—the "Woodall?"

Q. The "Woodall? A. I couldn't tell you.

Q. You say there was only one person beside the crew on board; who was it? A. That is, that I could see. All the rest of the men I saw aboard there were employes, such as firemen, and the captain, and the chief officer, and the engineer; outside of that there was one man.

Q. Who was that one man? A. I don't know.

Q. What sort of looking man was he? A. Afterwards a rumor gave it to me that he was——

Q. Never mind about that; what did he look like? A. Well, he was a man, I judge, about five foot eight, rather stout, dressed in a blue flannel suit, with black whiskers.

Q. Here (exhibiting paper to witness) is a work of art which may give you some assistance. Look at that and see if this is the man, or looks anything like him. Did he look anything like that? A. I couldn't recognize him by that picture. That looks to me like one of those cuts they have in the Sunday papers.

Q. That looks more like a pirate than anything else. A. The fact is, I had very little occasion to notice him at all, because I was engaged with what I went down to do, and he remained in the cabin all the time while I was there, in the captain's room.

Q. Was this person a member of the crew, or engaged in any employment? A. I don't know what he was a member of, sir; but there was a man that came aboard just before the boat left the dock, probably fifteen minutes, maybe a half hour, as I was there that much ahead of time, waiting. There was some little dispute, I think ——

Q. Did you see this man with his hat off, or did he not remove his hat? A. I can't say that I noticed him with his hat off. I think he had his hat on every time I saw him.

Q. You could not see whether he had a very high forehead or not, or a bald pate, as the captain said? A. No, I can't tell you.

Q. Did you have any conversation with Captain Hudson or with this man? A. Well, I had conversation with Captain Hudson.

My business was with him; but this other man—I don't think I passed a word with him, except when I left I said "Good day."

Q. I mean with Captain Hudson? A. With Captain Hudson?

Q. Yes. A. Not outside of the business I had with him with regard to his compass; that is all.

Q. No other conversation? A. No other conversation whatever.

Q. He did not tell you where he was going? A. Well, yes, he did, just before we left the dock. He said he was going down on the Yucatan coast, and to Honduras, and he was going to use the vessel for running up these small rivers to bring freight down to the regular steamers plying to New York and Philadelphia. That is my impression; that is the idea I have of it. Outside of that, I know nothing.

(Cross-examination waived.)

JOHN CRONIN, a witness called and sworn on behalf of the Government, testifies as follows:

By Mr. MARBURY:

Q. Mr. Cronin, where do you live? A. 1727 West Paul Place.

Q. Baltimore? A. Yes, sir.

Q. What is your business? A. Fireman.

Q. Have you ever been to sea? A. Yes, sir; twelve or thirteen years.

Q. Were you on board the "Woodall?" A. Yes, sir.

Q. Who shipped you? A. Well, I shipped myself; I found out there was a job there, and I signed articles in the pilot house; a man that I found out was named Brennan, I think, and that I understood was the commissioner; he came down to sign us. I signed articles in the ship's pilot house to go to Progreso, Honduras, and waters in South America—those small rivers where large vessels couldn't go.

Q. That is what you shipped for? A. Yes, sir.

Q. Where did that happen? A. This happened—the ship was down at Mr. Woodall's dry dock; and when we went to coal up—get coal in the boat—there is where we signed articles, by the coal pier.

Q. How long before you started did you sign these articles? A. Well, I worked on the boat four or five days—fitting out, putting a new pump in, and one little thing or another; getting ready for sea, and so forth.

Q. Under whose orders did you work? A. Under the chief engineer's, then.

Q. Who was he? A. Mr. Mowbry.

Q. What other men were in the crew, that you can remember? A. The crew; how many men was board of her altogether?

Q. Yes. A. Well, there was the captain, and the mate, six sailors, the cook, two engineers, and three firemen, and a fellow named Henry, a black fellow, and this here man—first he was said to be a planter, but I afterwards found out he was Gen. Roloff.

Q. First you say he was what—a planter? A. That's what they said down in the boat; Henry said he was a rich planter, and we thought we were going to handle stuff for him, you know; we were putting in a lot of coal, and there was no coaling stations, and we thought we were going to put this coal ashore and just use it for the vessel.

Q. How much coal did they have aboard? A. Well, I guess about 128 tons—something like that.

Q. What sort of coal was it? A. It was No. 2 Brighton Valley, I think, the best coal you can get, I guess—hard coal.

Q. It was hard coal, was it? A. Yes, sir.

Q. What kind of coal do you generally use? A. Well, in all the boats I have ever been firing on in Baltimore, they generally used soft coal. I never was in but one hard-coal boat before.

Q. Why is soft coal generally used? A. I think soft coal is a little cheaper.

Q. Is it rather an unusual thing to use hard coal? A. Yes, sir; the only time we ever used it then was on the steamer "Chesapeake," the time we had the strike, and couldn't get no soft coal; we had to use hard coal then.

Q. That is the only time you have seen hard coal used before? A. Yes, sir; in Baltimore. I fired a yacht out here, the "Fanita," and they used hard coal, to keep the dirt away, and so as to have no smoke.

Q. Without regard to expense. Can you give us the names of any of your shipmates on the "Woodall?" A. Well, I can give the names of the firemen and engineers; but the sailors, they were only called names like Blanco, or Jack, or Jim—you only know his first name; that's all you want to know, because you don't never ask a man for his second name.

Q. Tell us the names of any of the men outside of the common sailors, any of the firemen, or any of the assistants that you had? A. Well one was a fireman named John Lockley.

Q. John Lockley; who else? A. Patrick Sampson; and William Lawrence, he was the second engineer; and George Mowbry, he was the chief engineer, and Captain Hudson. Then there was one sailor they called Blanco, and another Erickson, and one they called Jesse James, and all kinds of names. They make the names up and give you any name.

Q. Then there were a great many of them just nicknames, were they? A. All nicknames, mostly.

Q. You mentioned Erickson and Lockley and Lawrence as among those that were on board there? A. Yes, sir.

Q. Did you, or any of the crew, so far as you know, know that you were going on a filibustering expedition when you started? A. No, sir; we never had no suspicion, only one day we seen a couple of revolvers, and as soon as we got to the Capes, the first thing we

knew about these being anything crooked was when the ship ran without lights, put no lights up at all, and he ran without lights, wouldn't allow no lights, only at the water-guage, and then we had to get a piece of tin and bend over the lamp at the water guage, just to throw the light on the water, so we could see the water.

By the COURT:

Q. That was from the Capes, was it? A. Yes, sir; from the Capes.

By Mr. MARBURY:

Q. You had lights going down the bay, did you not? A. Oh, yes; we had lights going down the bay; and then we hoisted the lights going up the Mississippi River, or any place like that, where we was going into a port, like Progresso; hoist the flag up, too, the Stars and Stripes,

Q. While you were out at sea you had no lights at all? A. No lights at all; no, sir; we were running away all the time, the firemen doing all the work—every time she seen smoke, running away from that—chasing around all the time.

Q. Every time she would see smoke she would run away from it? A. Yes, sir.

Q. And she would have no smoke to be seen, herself? A. No, sir; we didn't have any; hard coal don't make no smoke, very little—just when we was a-shoveling it on, there might be a little puff.

Q. Who was this man Henry of whom you speak? A. Well, he was always with this Gen. Roloff, kind of a good sort of fellow. He used to set us up once in a while; he had charge of the jug, I believe.

By the COURT:

Q. Was he white? A. No, sir; he was a black man.

By Mr. MARBURY:

Q. You say he was with Roloff—was he Roloff's servant? A. That was the way he acted, because they were always in conversation. First we understood he was just going to work his way down there; first he was going to help the cook; but after we got out to sea, he said—he talked funny, you know—"To hell with the cook; I never done nothing like that—me no work," he would say, "Dam fool."

Q. You say he had charge of the jug—what did you mean by that? A. Whiskey, you know; I would go to him and say, "Can't you give me a little drink?" and he would come out—he wanted it for himself, too, I guess—he would come out with a pitcher and give it to us.

Q. Did he give whiskey to the crew? A. Three or four of us stood in with him, you know, and we would get a pull at it now and then.

Q. Had you seen Roloff before you left? A. Before we left, just as he came aboard—he had a valise, and things like that; but the colored fellow, I believe he came aboard the day before that, or a couple of days, I think, before that; he claimed he wanted to work his way.

Q. What sort of looking man was Roloff? A. He was a stout man with side whiskers, and a big forehead, and baldheaded, and we would see him every day; you see, we was out about twenty days, and in his company every day—down in the boat all the time.

Q. Does this (exhibiting paper) look anything like it? It is a newspaper cut; of course it is not a very fine portrait. See if you can recognize him by that. A. Yes, sir; I think that's the man.

By Mr. JOHNSON:

Q. Don't you think that looks like Mr. Marbury? A. No, sir—no, sir; Marbury is only a little midget beside of him.

By Mr. MARBURY:

Q. He was a man of great magnitude, was he not? A. Yes, sir—as broad as he was long.

Q. Was he a very broad man—you say as broad as he was long? A. Yes; he was a stout, bald man, a pretty old man; he has got a little stoop.

Q. Did you notice anything about his eyes? A. He has got a queer kind of look; that's all I know.

Q. What do you mean by "a queer kind of look?" A. He kind of looked this way, like that (indicating).

Q. Did he blink his eyes? A. Well, I never noticed him that much, although I have been sitting right beside him, sitting on the rail, hearing him talk Spanish to this here Henry.

Q. Was any ammunition, or anything of that kind, on the boat when she left Baltimore? A. No, sir; we took on some big trunks, and then when I seen them opened there was tin cups and tin plates and spoons and shoes, and all that, besides the ship's stores—plenty of grub and stores.

Q. What amount of shoes did the trunks contain? A. Oh, the decks was full of them. When we landed that time they left a lot of shoes behind them, and we sold them to the men that works for the Government at Quarantine Station. They left a lot behind them—about a half a bushel; in the excitement of landing, and all, they left the things behind them.

Q. After you got through the Capes, you say you ran without lights. Where did you first stop? What is the first point at which the vessel stopped? A. The first place we stopped was a place called Pine Key. We ran in there and dropped anchor, and lowered over a boat, and two of the sailors got in it, and this Henry, and they went off to some place, which it was found out was an island—one of the keys, it was; and they came off with a boat's load of

men; and the schooner "Mandy Roslyn" (?) was run up alongside us, and hove to, and throwed her lines, and a lot of men come off of her, with guns and ammunition and stuff; and then a lot of these little sponge boats, that the fellows catch sponges with around Key West, some of them had men in them, and other boats besides; the biggest one of all was this "Mandy Roslyn;" she was a schooner-rigged boat, belonging at San Diego.

Q. How many men did they bring in altogether? A. 150 or 160.

Q. What arms did they have? A. Well, some had pistols around their belts, some had matchetes, some rifles, and different things—daggers.

Q. Did they bring any ammunition? A. Oh, yes; they brought ammunition—cartridge bags full of cartridges; and some of them were tied in pillow cases and some in soap boxes, and all kinds of rigmarole.

Q. Did they bring any dynamite? A. Oh, dynamite; I don't know how many cans there was thrown around; you didn't know what minute you would go up, the way it was slapped around.

Q. What took place when you found all these men coming aboard? A. Well, we commenced to kind of make a little kick with the captain, asking what way was this to do, to ship a married man away from his family and not tell him where he was going, and bring him on an expedition like this—he could have got people, maybe, that would have wanted to go, if he had asked them, that wanted to be heroes or something, but we didn't want to be no heroes.

Q. What was done? How was the kick stopped? A. Well, when we commenced to growl and kick they made up a little collection to give the crew, and they called all the sailors up and gave them $20 apiece; and Mowbray come to me and he says, says he, "Did you accept that money? It is a bribe. They can give you a sentence in the penitentiary when you get back, if you ever do get back." Says I, "Damned if I take a dollar, or twenty dollars, either." So Mowbray and Lawrence—the chief told us not to take it, and when we got to the captain the captain offered it to us. I said, "No, I don't want any $20; what good is money to me? I can't spend it; I can't even get water to drink"—we was short of water then—and I says, "Keep the money." So they done the same thing; and Mowbray must have talked with the captain, because when he got back he says, "What did you tell him—did you tell him that I told you not to take it?" He wanted it all himself, I guess, or something.

Q. From whom was the money collected? A. From different members of the crew. Everybody, I guess, that had anything, give in something; that's how it looked. I seen them going around; this fellow give something, and that one give something, and so on.

Q. You say the crew—not your crew, not the crew that worked the ship? A. No; among the soldiers.

Q. Did they get anything from Roloff? Well, now, you see, he was always in with the officers. They all stayed in the captain's department, right back of the wheel-house. They all stayed in there, drinking and eating in there. They stayed in there, and once in awhile they would come out and walk around and look around the men, and talk their own language; but a lot of them could speak English—a lot of the other men in the ranks could speak English.

Q. They could? A. They could talk English—some of them; yes, sir.

Q. Did you find out where they were going? Certainly; they told us where they was going to.

Q. Where? A. They said they were going to Cuba to fight for Cuba.

Q. How were they dressed? A. Well, the most of them had linen suits on, kind of a brown linen suits, little short jackets with a pocket all the way around in it, and linen pants, and some of them had these big sombrero hats on and a flag pinned in it—some with a flag on their coats, a little short flag. I had one of the flags myself; they gave them to us.

Q. What sort of a flag was it? A. A little piece of a flag—a little flag about that big (indicating), with blue and white stripes and a star on it—one star on a ——

Q. Was that the Cuban flag? A. Yes, sir; the Cuban flag—they told us it was the Cuban flag.

Q. What did these men do on the way over to Cuba? A. Well, some fellow would be minding the water; they went in little batches, you know, just so many in a batch, like, to eat—they come up one by one and took their grub and went up and eat it; and then the other batches would come up and eat it; and they had bugles, and everything like that with them.

Q. You say they had bugles? A. Yes; they had about three buglers in the crowd.

Q. Did they use the bugles to give signals, and that sort of thing? A. Oh, they put a stop to that, you know, it would draw attention, or something; and once I was shooting a rifle, and the captain came out and told me, "Don't do that any more." That was after they landed the men; he was scared after he landed the men.

Q. What seemed to be the nationality of these men? A. Well, they all seemed to be—they talked Spanish, but they said they were Cubans, you know, the ones that could speak English, and some of them told me they were on this island six or eight weeks, waiting there to get a chance to get off.

Q. Did you find out what part of the Cuban army they proposed to join? A. Well, no, sir; we didn't exactly know where they were going, until we ran in and found a place that was safe to land; and I heard this here captain say, "There is a light ahead there,"—he seen a little light, like it might be some vessel, as you see the lights

in her ports; and we were inside of the three-mile limits then; and Sanchez, the general—I found out his name was Gen. Sanchez—he said, "Hell or Cuba," and so in she went.

Q. What other officers was there besides Roloff and Gen. Sanchez? A. There was a little fellow who was supposed to be a cavalry colonel, or something—somebody told me his name; Rodrigeese or something like that was his name.

Q. Rodriguez? A. Or some such name; I couldn't understand the name.

Q. Did they have any organization or drill? A. No; some of them told us they drilled on this island; that's all. They had a little drilling, drilled in batches.

Mr. OWENS. I object to what these people said they had done on the shore.

The COURT. Yes; I do not think that is admissible.

Mr. MARBURY. The conversation that went on among the party, it seems to me, may it please the court, would be admissible—the conversation that took place while they were actually on the voyage over to Cuba; the conversation among the men, as showing the purpose for which they were going, and the object of the expedition, and the nature of the enterprise. That is the only way, it seems to me, in which we can discover what the nature of the enterprise was. I suppose a man who was on the vessel when this party came aboard would be able to find out whether it was a party which was going on a pleasure excursion or a picnic, or whether it was a body of men going to war; and the only way in the world he could find out would be from the men themselves, from hearing the conversations of the men among themselves. That would seem to me to be competent evidence beyond all question of the nature of the expedition, the nature of the party.

If a person saw a lot of ladies and gentlemen come aboard, and heard them talking on subjects relating to pleasure, he would know what they were going for, that they were going on a voyage of pleasure. If he saw a lot of men come aboard with arms in their hands and flags in their buttonholes and caps, and heard conversation among them relating to war, he would gather from that conversation the fact that that was a military expedition. That is the kind of proof, as I understand it, that has been generally employed in showing that an expedition is a military expedition. It is not always necessary to prove that the men were drilled; they have no room to drill aboard the vessel; but the fact that the conversations, the talk among them, disclosed that they had been drilling before they started, would seem to me competent proof. That is the way you find out what sort of people they were; it is a part of the *res gestæ*, so to speak. It is not that they came and told him; but if a bystander or member of the crew heard the talk among these men, heard them discussing the fact that they had been drilling before

they started, that would be a circumstance—the very fact that they said that would show that they were a military expedition.

Mr. OWENS. My reason for objecting to it is this, may it please your honor: the defendant in this case ought not to be bound by any statements made by persons of whom, as far as we are concerned, we have no knowledge. And, by way of suggestion, I take it to be very clear that the people may have drilled on that island, and yet the organization that they had, if any, upon that island, might have been discontinued, and they may have come upon that boat merely as passengers, for the purpose of going there. And inasmuch as this witness is here to prove not what he heard somebody else say with reference to a time of which he himself has no knowledge, but he is here to prove what he himself knows and what he himself saw, I object to this proof, and ask that the answer be stricken out.

Mr. MARBURY. I offer distinctly to prove the fact—and I think it is important to prove it—that the talk between the members of this party showed that they were engaged in a military expedition, and that they organized and had been drilled for that purpose. How else could we prove that than by proving it from the talk that took place between them? If they had room in which to drill on the ship, it would have been very easy to prove their movements; but they had no room, as the evidence showed, to do that. They had been drilling before they started. How could we prove the fact that they had been drilling before they started more clearly and more satisfactorily than by proving that after they did start, and while they were aboard the ship, the conversation, the talk, among these hundred men, showed that they were a band of men starting on a military expedition, who had been drilled before they started?

The COURT. I think it is admissible.

Mr. OWENS. I note an exception.

By Mr. MARBURY:

Q. You do not understand Spanish? A. No, sir.

Q. You learned what they had been doing before they started, and how long they had been there, from the talk between those who could talk English? A. Yes, sir; those that could speak English.

Q. You say this Gen. Roloff stayed mostly in the cabin with the captain and the officers? A. Yes, sir.

Q. Did he do anything in the way of work, or anything of that sort, on the way over, do you know? A. Well, I couldn't say that he had charge of it—I couldn't understand his language; he spoke Spanish; but he directed everything. He was the one that had the trunks taken on deck and opened, and distributed the shoes and things out.

Q. How many pairs of shoes were there in the trunks; do you know? A. Indeed I don't know, sir; it was chock-a-block full—a great, big trunk.

Q. Did he distribute the shoes among these men that came aboard? A. The men that came aboard at Pine Key.

Q. Did they have any need of shoes? A, Oh, very nearly all, except the officers.

Q. Tell us what other conversation you heard among these men in reference to the expedition? A. Well, I heard them say they were going to Cuba, and they were going to fight these "dam Spaniola," and all like that, and they would show you with the machettes and all kinds of business like that, how to use them handy; and there was one young fellow, who was some orderly or something to General Sanchez; he was with him, whatever you call it, orderly or something, to General Sanchez; and he could speak the best English aboard the boat, because he staid a good while in Key West; a little, short fellow; and he explained the whole thing to us. He used to be talking to them sometimes when it was so hot you couldn't sleep, and there was such a crowd of men on deck that you couldn't walk around without making one of them move out of your way, or walking on top of them; they were packed like sardines in a box. There was such a crowd of men on deck that you didn't know where to sleep at, and you couldn't go down below, because it was so stifling hot there; hot as a bugger; and you might as well sit up and talk and pass away the time; and sometimes I did that.

Q. And you could hear them talking? A. Oh, yes; they talked all the time.

Q. About what they were going for? A. Yes, sir; and also kept a man up in the masthead, looking out with a glass.

Q. They kept a man at the masthead? A. Oh, yes, sir; three or four at the masthead. We kind of kept a lookout, too; we didn't want to get ketched and put in prison either.

Q. What arms did they bring? A. Well, all kinds of rifles; some had been overboard.

Q. How many rifles did they bring? A. Five or six hundred, I guess; some was tied in bundles, and some in boxes, and some just put together and tied with pieces of rope.

Q. Do you know what kind of rifles they were? A. Some of them was Winchesters, and some of them carbines, and some of them just like these ones that they have in shooting galleries.

Q. How many of these rifles had been overboard? You say some of them had been overboard. A. Some had been overboard; we understood that the "Childs" throwed them overboard; she had a hole blowed in her boiler; she tried to land in Cuba, and had to put in Key West; I understood she dumped these rifles overboard.

Q. Did they have any belts on? A. Oh, they had some belts; some had "U. S." on and some had the "U. S." filed off, and these

things to hold cartridges that the United States soldiers have to put cartridges in, and slung around their waists on the belt.

Q. Who was it that said, as you went in, "Hell or Cuba?" A. That was Sanchez.

Q. You say they had these machetes; how did they pronounce that word? A. Machete—something like that—machete (illustrating).

Q. Do they call it "machete" or "machete" (illustrating)? A. "Machete" (illustrating)—it is like a long corn knife, only sharp at one end.

Q. What sort of a weapon is it? A. It is a great, big, long knife, with a bone handle to it, and on it it says: "Cuba Liberia;" that is the reading on the blade of it. It is about that long (indicating).

Q. How could you tell the officers in this crowd from anybody else? A. Well, they were better equipped with arms, and better dressed, and they were all through, except one or two of them, better looking men every way. You could see they were better men in their appearance and everything.

Q. Were these 150 men—I mean outside of the officers—all white men? A. Oh, no, sir; not half of them were white; they were colored men.

Q. They were? A. Yes, sir.

Q. When you say "colored," do you mean mulatto, or black? A. I mean black as any man ever seen.

By the COURT:

Q. Were they straight-haired or woolly-haired? A. Woolly-haired, something like the Henry they had aboard there. He got off; he didn't follow us.

Q. Did he go ashore? A. He went ashore at Pine Key.

Q. He did not go to Cuba? A. No, this Henry didn't; no, sir.

Q. Did they have any sentries posted during the voyage? A. Only landing the men; they put men at the stern of the vessel while they were landing them. First they sent a man ashore to see that everything was all right before they landed, and if everything was right he was to shoot. So he shot a rifle in the air, and we heard the crack of it and lowered away the boats.

Q. How long did it take you to land the men? A. About three hours and a half or four hours.

Q. Where did you go after you landed the men? Did Roloff go ashore, too? A. Oh, he went ashore with them.

Q. I suppose you sailed right away. Where did you sail for? A. We were high and dry on land; we couldn't sail then; we had to wait until the morning, so we took two other Cubans aboard in the place of this here Gen. Roloff and this here colored fellow, Henry, and they were supposed to be pilots to get us out of there, but we couldn't get off. We tugged and tugged, and at last we

commenced unloading, and throwing lumber and life-preservers and barrels and everything we could take away that wasn't necessary to take the weight off of her, trying to raise her off; and we got all the steam we could, put the full jet on her, and throwed the engine wide open, and jumped over this bank, and away we went.

Q. Where did you go? A. We went to a place called Progreso, Mexico.

A. And then from Progreso where did you go? A. We went to New Orleans.

Q. How long did you remain at New Orleans? A. Well, we got quarantined three days, and then we went up and got to New Orleans on a Sunday, and I believe we left a Tuesday or Wednesday.

Q. Did you get your pay? A. Well, we had to make a kick about getting there broke three days after being away on an expedition like that; so we went up and stated the case to the United States commissioner and he says: "That's all right," he says, "keep it quiet; I'll fix you and I'll have your money for you tomorrow." So I says: "All right; we'll go up in the morning." So in the meantime we heard the captain was sick, and that made it worse; instead of being sick, we ketched him in a saloon, and we went in there and raised a racket with him again. So the next evening we goes up before the commissioner and gets paid, and they takes a wagon with two mules in it and backs it up to the place, and all eleven of us jumps in it and drives to the railroad depot, and a fellow gets on the train with us from Woodward & Wight, ship brokers, in New Orleans, and after we gets away to a place called Auden(?), I believe, I think it is a hundred miles outside of New Orleans, he comes around and gives us $50 apiece, and he left us together.

Q. Did you get your regular pay besides? A. No; first they had a kick—they wanted to beat us out of everything.

Q. I know you had a hard job getting it; but you did get it, finally? A. Yes, sir.

Q. And then this fellow gave you $50 extra? A. Yes, sir.

Q. What did he give you the $50 for? A. Well, the way I look at it was I signed articles to go away for three months to trade in South American waters, so the three months' pay was $90, and we had $40 advanced, and we found out they couldn't take the $40 off of us in New Orleans, because they are not allowed to give any advance on the American coast, and they found out they couldn't take it, so he told us to keep quiet about the advance, it was all right; that they couldn't take it out. If it hadn't been for that we wouldn't have got a month's pay, the way we was treated.

Q. I do not mean to say you got any more than you were entitled to in view of the risk you had. A. No, sir; certainly.

Q. You say you got an advance in Baltimore before you started? A. Yes, sir; it is always customary when you are going on a vessel for two or three or four months on a coast or a foreign port that you can get an advance and leave it at home to your people. A married man——

Q. It is paid to your family, as a general thing? A. Yes, sir; they give you a note for it, and then you go home and give your wife the note, and when the ship is out of port three days, so you can't run away or nothing, she can go and collect the money.

Q. That was done in this case? A. Yes, sir.

Cross-examination.

By Mr. OWENS:

Q. How long do you say you have been a sailor? A. Twelve or thirteen years, sir.

Q. You were engaged on this boat as fireman? A. Yes, sir.

Q. What have you been doing since you came back? A. Well, working around the wharf, unloading boats, if I couldn't get any firing to do—anything to make a living. I made a couple of trips to Boston—do anything like that; you know sometimes a fellow can make a trip in another man's place and can catch a steady job—anything to make a living.

Q. What are you doing now? A. Well, I ain't doing nothing now, lately.

Q. You are not doing anything? A. No, sir; not at present. I expect to go away; I guess I will lose the job; I am expecting to go away, only on account of this here case; I expected to go away and work compressed air, and do that kind of work.

Q. Are not your expenses being paid now—your living expenses? A. Well, I am getting something for my time.

Q. What do you get? A. I am getting $10 a week for my time.

Q. You are not doing anything, but you are getting $10 a week? A. No, sir; I am not doing nothing now. I have had to do something; if I hadn't I wouldn't be in the case.

Q. Who pays you? A. Well, that I don't know, sir, only a man named Douglas, that's all; I don't know who gives him the money; I just receive it.

Q. You just receive it? A. That's all; yes, sir.

Q. You do not know where it comes from? A. Well, I guess I know where it comes from.

Q. Since what time have you received it? A. I guess about eight weeks.

Q. You have been getting $10 a week for eight weeks? A. Yes, sir.

Q. From a man named Douglas? A. Yes, sir.

Q. In what business is Mr. Douglas engaged, do you not kuow? A. No, sir; unless he is a detective or something like that, I don't know.

Q. He is a detective? A. He might be; I wouldn't swear to that, either.

Q. When did you first meet Mr. Douglas? A. I met him in Baltimore.

Q. When, I say? A. Well, about—I couldn't exactly tell you when, either.

Q. About how long ago? A. Well, I judge about three months —something like that.

Q. About three months ago? A. I ain't sure; I won't swear to that.

Q. I know; I just want to get at what you know, you understand; that is all. A. Well, I couldn't exactly tell you.

Q. What were the circumstances under which you met Mr. Douglas? A. Well, he asked me was I John Cronin, and was I on board the "Woodall?" I told him yes. He said he wanted me as a witness in this case, and all he wanted of me was just simply to tell the truth; and I knew I got treated wrong on the vessel—I was treated like a dog; I was treated wrong on her in every way, and so was most all of them that was aboard of her; so I said I would.

Q. Who treated you wrong on that vessel, John? A. Well, the captain did.

Q. How did he treat you wrong? A. Well, in the first place, he was going to pay us off in Progreso, and we made a kick; we wanted to see the American consul; so they sent off a fellow that represented himself to be the representative of the American consul, and he couldn't speak a word of English, and all the fellows that was with him was saying, "Don't mention it, you are heroes," and all like that; so I told the sailors not to pull up that anchor; and I says: "You get a couple of boatmen and put me ashore;" and then the second engineer and me was going to swim ashore, and a fellow says: "If you go over here, no more you strike the water than the sharks got you;" and that scared us off there; and so this fellow was just saying "Heroes—you are heroes;" and the first thing we knew we found there were two men-of-war waiting outside of the harbor for us; and so the captain said: "Now, boys, I'm a gray-headed man, and don't send me to prison," and all like that; so I said: "This is a hell of a way to do, to send us to prison, not to tell us where we are going when you take us away at sea;" I said: "You didn't think of that; then suppose we had never got back alive; them that are depending on us would go to the poor-house."

By the COURT:

Q. Do you mean to say the way you were treated badly was that you were taken on this trip without knowing what you were going to do? A. Yes, sir; shanghaied, or whatever you call it.

By Mr. OWENS:

Q. You were not shanghaied? A. That's worse, isn't it?

Q. Shanghaing is to steal you. You were not stolen and drugged and put aboard, were you? A. No, sir; but I was given clearly to understand that I wasn't going no trip like that.

Q. Did you not say that you were engaged on this vessel three or four days in the port of Baltimore? A. Yes, sir; maybe five days.

Q. Can you remember about what time you went on board of her?

The COURT. What day, do you mean?

Mr. OWENS. Yes; I want to see if he can remember that.

A. I think it was in July.

Q. I know; but do you not remember—did you sign your articles before or after you went aboard of her? A. No, sir; I worked port wages; the way they do, you don't sign right away; you work three or four days, you know, at port wages. Well, I made them few days port wages, and then when they went there to coal up then we signed.

Q. Did you see Captain Hudson frequently while you were working on the vessel in Baltimore? A. Oh, he came down once in a while; he wouldn't be there all the time; he couldn't stay down there all the day long; he would come down and look around and go away again; but Mr. Mowbray was doing the fixing, little repairs, all along; the boat was laid up for a good while, and she needed a lot of little work done on her.

Q. John, does Captain Hudson drink? A. Oh, yes, sir; he drinks.

Q. What was his condition during the days that he was here in Baltimore while you were there? A. Well, I can't say that he was drunk, you know, but he just takes a nip—I never seen him staggering.

Q. You never saw him staggering? A. No, sir; he is a man that just goes and takes a glass of liquor, same as anybody.

Q. Did you ever see him, as you thought, under the influence of liquor in any way? A. Well, I guess maybe I have seen him like he couldn't—well, I can't say that he would stagger enough to say that he was drunk.

Q. What is your idea of drunkenness?

Mr. MARBURY. What has that got to do with the case?

Mr. OWENS. It has got a good deal to do with the case.

The COURT. He has described his condition as he saw him.

A. Sometimes he had a lot of business to attend to; and, of course, in getting a boat ready, grubbing her up, and everything like that, a man has got to keep a level head about him, or he will have a mighty big grub bill to pay.

Q. What time during the day when you were engaged on the boat here in Baltimore did you notice mostly that he had been

drinking? A. Well, I can't say every day—I seen him walking around, business-like, you know, tending to this and tending to that, and he would go away and come back again, like any captain of any other ship does—go away again, and stay away a couple of hours, and maybe be back aboard of her and spend some time. He and Mr. Mowbray was going and coming like that all the time.

Q. Where was Captain Hudson when this party came aboard down at Pine Key, do you say—Harbor Key? Where was he? A. He was aboard the ship.

Q. Was he in the cabin or standing on the deck, do you remember? A. Well, the first—I guess I wasn't as quick as him, but I guess I seen them as quick as a fireman would. I happened to be on watch, and I looked out and seen them hopping aboard. I didn't know what they were; I thought they were pirates or something, but some of them give us a little hint what they were.

Q. Where was Captain Hudson then? A. He was on board the ship.

Q. Was he on deck or in the cabin? A. Well, the captain's cabin was a hot place. There are three doors in it, one on each side of the ship, and one from the pilot-house, so they are always open, and in and out all the time. The cabin is a hot place; you want to get out where there is air. He was taking a salt-water bath every morning, getting a sailor to throw water over him.

Q. Where were you when they disembarked down at the island, down at Cuba? A. I was on the deck.

Q. You were on the deck? A. Yes, sir.

Q. Now, just detail how they went ashore, how it was done. A. Well, when they first commenced to go in, after we got in and dropped the anchor and stuck fast to the bottom, we sent these men off, armed them—each one had a rifle and fifty rounds of ammunition; about six or eight or maybe twelve was in the boat. They landed first and scoured around to see everythng was clear, and then they fired a shot, and Roloff commenced then to go ahead, take this thing and this thing and this thing and explained where to put this and that, and helping them along to disembark. He was the last man that left the ship.

Q. He was talking in Spanish, I believe you said? A. Yes, sir; I couldn't understand what he said.

Q. How were the rest of the things carried ashore? A. Well, all the Cubans helped, you know; so many men would go in a boat, and the sailors they steered the boat, and the Cubans rowed. They rowed, and the sailors steered the boat in; and two or three of them would come back and get more men and ammunition; and I guess they made about eighteen or twenty loads—something like that. I know one boat made six and maybe seven trips.

Q. How did they carry the arms ashore? A. Well, they gave everyone a rifle first, and fifty rounds of ammunition, cartridges.

Q. You are talking about the twelve men, now. I am talking about the other men. A. I am talking about them all; every one of them got fifty rounds of cartridges. I had one of them myself, one of them rifles; two was left behind, and I took one myself, and so they give each one a rifle and fifty rounds of ammunition apiece, just put them in a little box.

Q. You testified before Commissioner Shields in New York, did you not? A. Yes, sir.

Q. Did you not testify there that these men were not armed when they came aboard the boat? A. They weren't armed with the rifles—only one or two of them had rifles; but they were all armed with machetes, and daggers, and pistols; but the rifles they didn't get until they were ready to disembark, about two hours before they got to land?

Q. When they came on board the boat, the guns were brought in bundles, and packages, and so on. What did they do with them? A. They stowed them away, what they could, in the ship's hold. They had coal enough burned out to stow away a lot of those; and what they couldnt stow away—they left this dynamite on the ship's side, by the rail; the dynamite was in big cans, like this coffee that they sell in twenty-pound cans, and they were full of it; and when they taken more coal out, they could get room to put the dynamite in there; and at last they had room enough for all of it.

Q. Then these men did not have cartridges when they came on board the boat, did they? A. Only what came off this "Mandy Roslyn."

Q. Those cartridges came off in bags, did they not? A. Cartridge bags, boxes—everything.

Q. What did they do with them? A. Stowed them away down in the hold.

Q. They took the rifles that were brought aboard the vessel——

A. Stowed them away in the hold.

Q. They took the rifles that were brought aboard and the cartridges, and they stowed them away in the hold? A. Yes, sir.

Q. And they stayed there, did they not, until they got off at Cuba? A. Oh, no, sir; after we got within land about a couple of hours, they taken them out and distributed them around; some was getting them ready, some of them, after the guns were distributed, they cleaned them up; and they got the cartridges out, and divided fifty rounds to them. Everyone had a rifle; some of them was kicking because they didn't get the Winchesters, and some had to take carbines, and they were going around trying to get cartridges to fit the different kinds of guns. I was just getting over the fever; I had the fever three days and three nights aboard the ship.

Q. You had fever? A. Yes, sir.

Q. Where was it that you had the first altercation with the captain? A. When he offered me $20 at sea was the first growl I had; but I always used to have a pick at him.

Q. Where were you when he offered you the $20 at sea; where at sea were you? A. Oh, I can't tell you that. We were in mid-ocean; we were away at sea, a good ways out.

Q. Was that before or after you picked up the men? A. After we had the men aboard.

Q. Now, did you not go ashore somewhere down there; did not the captain send you ashore to get water for the boat? A. Yes, sir, in a place called Women's Isle, with a——

Q. Mularie (?), or something like that? A. Yes, sir; and they wouldn't allow us to go alone in the boat, for fear we would run away—and so we would; I know five or six of us would have jumped out—so they sent the Cubans after the water.

Q. Then did you not have a kick with the captain down there? A. Oh, we had another gorwl.

Q. What did you say to him? A. Oh, I told him what we were going to do, how all of us was kicking about taking a man away from home and bringing him on a hell of a trip like this, and everything like that—kept at him all the time.

Q. Then you were not a very subordinate crew, were you? You were a quarrelsome crew, were you not? A. Oh, we done our work like men.

Q. But you were rather quarrelsome, because you thought you had been treated badly? A. Well, we thought, and any man else in the predicament we was in—she did didn't go no twelve knots an hour, either.

Q. She did not? A. She went pretty good when she was light; but a boat loaded down to her water-line with all them men and that stuff in her, loaded right down to her decks, couldn't go fast; she would smother herself.

Q. What did these men do on board the boat? A. Well, some of them would be in the daytime shining up or cleaning up the machetes, and some of them helped us to get some coal out of the hold; the bunkers only held, I believe, ten or twenty tons of coal, and when we ran that coal out we had to get the coal out from the fore hatchway; and they would carry it in baskets and dump it down.

Q. The men that you took aboard there did pretty much as they pleased while they were on board the boat, did they not? A. Did as they pleased?

Q. I say pretty much as they pleased? A. Well, they done as they pleased—walked around and laughed and talked.

Q. They were not required to perform any duties of any kind on the boat, were they? A. Only watch the water barrel; we put them

too late to watch the barrel; we ran out of water and two or three days we drank bilge water, or filter water, out of the filter box.

Q. The reason somebody was put there to watch the water barrel was because the water barrel had been emptied once—or was it not? A. Yes, sir; to save the fresh water.

Q. Who watched the water barrel? A. The soldiers, you know—one now, and one again.

Q. That was done at the request of everybody aboard, was it not? A. I think they made a kick——

Q. The crew insisted upon that, did they not? A. Insisted?

Q. I say you fellows, the crew, insisted upon having that water barrel taken care of, so you could have water? A. Oh, no; we had two little kegs stowed away, because the firemen have got to have water; there ain't no man going to do the work if he is a fireman without he has got water.

Q. But you got the water out of the water barrel, did you not? A. We filled everything with water; we filled all the barrels aboard the ship, and they bought whiskey barrels and filled them with water, and little brandy kegs, and filled them with water, and thought it would be enough for two hundred men, let alone anything else——

Q. And after that was all done you filled up at Mularie(?) island with water? A. Three or four barrels, that was all we could get.

Q. Then you put someone over the water-barrel to watch it? A. Oh, no; when they first came to this Pine Key, they all came aboard, and they commenced to dive into the water and drink it up, and a fellow would take hold of a big piece of beef, and another fellow would eat a lot of salt meat, and they had to drink it. Some of them would go over and pull the bung out, and all like that; and so the officer, he talked to them in Spanish, and told them what to do.

Q. They used their machetes for the purpose of cutting the meat, if they wanted it, did they not? A. Yes, sir; that time, certainly; some had daggers, cut it with a dagger.

Q. Do you know what a machete is? You have described what it is, but do you know what it is used for? A. It is used—they use it to chop anything, and use it in warfare, and use it for every purpose, I understand.

Q. You just don't know? A. I never used one.

Q. Did you not testify in New York that you were being paid by a Pinkerton detective? A. Did I know the Pinkerton detective?

Q. Did you not say in New York that the man who was paying you was a Pinkerton detective? A. No, sir; I didn't mention anything about a Pinkerton detective.

Q. Who was paying you when you went over to New York? A. Well, a man, I don't know his name; one man one time, and one another time, so I don't know; I didn't say it was no Pinkerton detective; I just said I was getting $10 a week.

Q. Is this man who is paying you $10 a week now the same man who has been paying you $10 a week all the time? A. No; he is a different man most all of the time.

Q. Do you not know now, as a matter of fact, that the money that you get comes from the Spanish Government? A. No, sir; I wouldn't take an oath to that, either.

Q. Do you not believe it?

The COURT. Well, Mr. Owens——

A. I don't know, sir; I wouldn't say that.

Redirect examination.

By Mr. MARBURY:

Q. Was Captain Hudson a good navigator; a good skipper? A. I guess he is about as good a man as ever I saw in life. I don't see how in the world he ran the boat and could tell where he was at all the time, without a log, or anything like that. Part of the time they would be running zig-zag, this way and that way; and it would take a good navigator to tell where the boat was going, that way.

Q. He was a skillful navigator, then? A. Yes, sir; he was that.

(At this point the court took a recess until 1.30 p. m.)

After Recess.

Pursuant to adjournment, the court resumed its session at 1.30 p. m.

JOHN LOCKNEY, witness called and sworn for the Government, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) What is your name? A. John Lockney.

Q. Where do you live? A. 519½ Cross street.

Q. What is your occupation? A. Fireman.

Q. Fireman aboard ship, you mean? A. Yes, sir.

Q. Did you ship aboard the "Woodall" in the summer of 1895? A. Yes, sir; I shipped on her the day she left.

Q. You shipped on her the day she left here? A. Yes, sir.

Q. How did you come to ship on her? A. Why, Jack Cronin first notified me about the boat; the other two fireman left and he brought me down there, and I went away that morning—the morning she sailed.

Q. What is that? A. I say I went away in her that morning she sailed. That Cronin, he came after me.

Q. Did you know where she was going? A. No, sir; I only know she was supposed to go to a place called Progresso.

Q. Yucatan? A. Yes, sir.

Q. How did you find out where she was going? A. I didn't know anything about where she was going to until when these men came aboard down near Panquai; we were supposed to go to Progresso before that time.

Q. You did not find out where you were going? A. Until the men came aboard ship.

Q. You did not know you were going to Cuba when you started? A. No, sir.

Q. Now, tell us of the voyage from Baltimore to Florida; or give an account where you went? A. After we left Baltimore we went along—I suppose it took us about 8 days to get down there—and we anchored down there at a place called Harbor Key; that is, we anchored there over night, and the next moring these men commenced to come aboard in small boats.

Q. What men? A. Supposed to be soldiers; they all had bags with them; they all had bags.

Q. Did they bring any arms or ammunition? A. Yes, sir; there were guns; the men were armed with something like a sword, about that long (indicating), and several of them had pistols and small daggers.

Q. Did they have any rifles? A. Yes, sir; they was in the bottom of the boats; they passed them on board.

Q. They brought them in the boats with them and passed them on board? A. Yes, sir.

Q. What did they do with the rifles after they got them aboard? A. They put them down in the hold.

Q. How long did they keep them there? A. Until the day before they landed.

Q. What did they do with them then? A. They took them out and distributed them amongst the men.

Q. Who did that distributing? A. I don't know who distributed them.

Q. You don't know who distributed them? A. No, sir.

Q. They were distributed among the men? A. Yes, sir.

Q. Did they distribute any ammunition? A. Yes, sir.

Q. How were these men dressed that you took aboard at Harbor Key? A. They were dressed in linen suits.

Q. Did they have anything else with them? A. I didn't notice anything else that they had with them.

Q. Did you notice whether they had any flags or badges or anything of that sort? A. Some of them had small flags, Cuban flags. They call them Cuban flags.

Q. I forgot to ask you; on the way going down there did you show the usual lights from the ship? A. I don't know, sir; of course it is my place down in the fire-room and I didn't have anything to do with the lights.

Q. You don't know whether there was any lights shown or not? A. No, sir.

Q. How many men did you take aboard at Harbor Keys? A. That was about 150.

Q. About 150 altogether? A. Yes, sir; I didn't count them.

Q. For what purpose did they come aboard? A. I don't know, sir; for what purpose they came aboard.

Q. Did you hear them talking amongst themselves? A. I never had any conversation with any of them.

Q. Yo do not talk Spanish? A. No, sir.

Q. Do you know whether any of them talked English? A. One or two of them spoke English.

Q. Did you hear them taking? Did you understand from anything that they said, for what purpose they were going to Cuba? did they state anything to indicate that? A. No, sir; I never heard them indicate any purpose that they were going to Cuba for; I heard one of them say they were going to Cuba; that is all.

Q. And that is all you know about it? A. Yes, sir.

Q. What did you do with them after you got them on board? A. Well, we run about three days and we came to some mountainous land, and threw the anchor overboard, and went up on the bank, and put them in small boats, and landed them there.

Q. Where was that? A. I don't know, sir, where it was; it was supposed to be Cuba, I guess.

Q. Then what did you do? A. After we landed the men, we started out and were around there, and we had to lay there that morning until it came daylight, and then we sighted a vessel, and we run from these reefs, and got away from her, and kept on to Progresso.

Q. And then how long did you stay at Progresso? A. We staid there 24 hours, I guess.

Q. What did you do at Progresso? A. The captain went off to —well, some, of the crew had a little fuss with the captain, and he went off to attend to some business, I suppose, and he brought a man aboard that represented himself as the American consul and went through a few details, and started off to New Orleans; he was supposed to put United States mail aboard ship.

Q. How long did you stay at New Orleans? A. We anchored at quarantine and staid there 3 days, and went to New Orleans and staid there 2 or 3 or 4 days, I guess.

Q. Where did you get your pay? A. At the commissioner's office; we got one month's pay at the commissioner's office, and the balance on the train.

Q. One month's pay at the commissioner's office and the balance on the train? A. Yes, sir.

Q. Who paid you off? A. I don't know; some ship broker; some chandler.

Q. He paid you off on the train. A. Yes, sir.

Q. How much did you get on the train? A. $50.

Q. $50 apiece? A. Yes, sir.

Q. When you found out you were going to Cuba what took place then? A. Well, we made a little kick, but it was no use kicking over that; we had to take the medecine.

Q. What did they kick about? A. They didn't think they were going on such a trip as that.

Q. What sort of a trip? A. We didn't suppose we went down there to carry men; we thought we were going to run fruit and stuff.

Q. Well, now, I know, but what made the kick; you do not care what you carry ordinarily; it would not be any more trouble to fire for a cargo of men than for a cargo of pineapples, would it? A. No, sir.

Q. What made you kick then? A. I didn't do no kicking; it was no use kicking then when you were out there.

Q. What was the objection that you had to taking the men?

WITNESS. Sir.

Mr. MARBURY. Did they object to taking these men to Cuba? A. I don't know, sir.

Q. You heard what took place, didn't you? A. Yes, sir.

Q. I mean you found out why it was they objected to taking these men to Cuba? A. He wanted to give us $20 apiece; that is all I know, and we wouldn't accept of any money.

Q. Who offered to do that? A. The captain.

Q. Captain Hudson offered to give you $20 apiece? A. Yes, sir.

Q. Why did he offer to give you $20 apiece? A. Why, to stop us from saying anything, I suppose, when we got to our destination.

Q. (Mr. OWENS.) You simply supposed that, didn't you? A. Yes, sir.

Q. You don't know that? A. No, sir.

Mr. MARBURY. That is all we want to ask him.

Cross-examination.

Q. (Mr. OWENS.) Your name is John Lockney? A. Yes, sir.

Q. What are you doing now? A. I am not doing anything.

Q. You are not doing anything? A. No, sir.

Q. How do you live? A. I am getting paid to stay in town.

Q. Who pays you to stay in town? A. A man by the name of Edward Gaylor.

Q. The same party that pays——

GEN. JOHNSON. Cronin. (a pause.)

Mr. OWENS. Then the same man that pays you is not the man that pays Cronin? A. I suppose so; I don't know, sir.

Q. You don't know? A. No, sir.

Q. Do you know who Edward Gaylor is? A. Yes, sir.

Q. Who is he? A. He is the superintendent of the detective agency, the Pinkerton Detective Agency.

Q. The Pinkerton Detective Agency? A. Yes, sir.

Q. (GEN. JOHNSON.) Do you know a man named Douglas? A. Yes, sir.

Q. Is he a Pinkerton detective? A. He is a detective.

Q. (Mr. OWENS.) How much are you getting? A. Getting $10 a week to defray our expenses while we stay in the city.

Q. Ten dollars a week to defray your expenses while you are in the city? A. Yes, sir.

Q. That is about what you would get in any other way, $40 a month, isn't it? A. Yes, sir.

Q. How long have you been promised to be paid that? A. Until the case is over.

Q. Was that an agreement made with you in so many words, or is that your idea? A. That is my idea.

Q. That is your idea? A. Yes, sir.

Q. Now, as a matter of fact, don't you expect to get a great deal more than $10 a week? A. No, sir.

Q. You do not? A. No, sir.

Q. How long have you been getting $10 a week? A. About 8 weeks or 7, I suppose.

Q. About 7 or 8 weeks? A. Yes, sir.

Q. Did you go over to New York? A. Yes, sir.

Q. Who took you over there? A. Mr. Douglas.

Q. Mr. Douglas took you over there? A. Yes, sir.

Q. Why did he take you over there? A. He took us over there to swear against General Roloff.

Q. To swear against Gen. Roloff? A. Yes, sir.

Q. And paid your expenses, didn't he? A. Yes, sir.

Q. Do you know altogether how much money you have gotten from Mr. Gaylor? A. About $80.

Q. About $80? A. Yes, sir.

Q. You have already gotten that? A. Yes, sir.

Q. How much did you get while you were in New York? A. Not a cent.

Q. Not a cent? No, sir.

Q. Did you get your expenses paid? A. Yes, sir.

Q. And your trip over there paid? A. Yes, sir.

Q. And you were over there in New York getting right along $10 a week, were you not? A. Oh, yes; sir.

Q. That is good wages? A. Right fair.

Q. Right fair wages? A. Yes, sir.

Mr. LEE. It is customary to give the witness mileage.

Mr. OWENS. I understand this, but this is not mileage; you don't pay mileage by the week. Do you know where Gaylor gets that money from?

A. No, sir.

Q. You don't know anything about that? A. No, sir.

Q. What is your impression?

Mr. MARBURY. One minute.

COURT. Oh, well, now, that is not evidence.

Q. (Mr. OWENS.) What were your hours aboard the steamer "Woodall?" A. Four on and eight off.

Q. Four hours on duty and eight off? A. Yes, sir.

Q. Where were yon when these men came aboard? A. I was off the watch.

Q. What do you mean by being off the watch? A. I was around the deck.

Q. Were you on deck? A. Yes, sir.

Q. And you saw them? A. Yes, sir.

Q. Where was Captain Hudson when these men came aboard? A. I don't know, sir; he was on the boat somewhere; I don't know exactly where at.

Q. Where were you when they came aboard—where were you standing? A. I was standing back aft around the fire room.

Q. Where did they get on the boat? A. They got on alongside of the boat, different parts.

Q. About how far were you from these men when they came on the boat? A. About 6 or 7 feet, I suppose.

Q. Only about 6 or 7 feet? A. Yes, sir.

Q. Did you see Captain Hudson standing there? A. No, sir, I never saw Captain Hudson.

Q. You did not see him? A. No, sir; I didn't see him; he might have been around, but I didn't see him.

Q. How much whiskey was there on that boat? A. There was a barrel of whiskey.

Q. Was it in general use? A. No; not in general use. We were allowed three or four drinks a day.

Q. You were allowed 3 or 4 drinks a day? A. Yes, sir.

Q. Well, was Captain Hudson drinking any? A. Yes, sir.

Q. He was? A. He took a little occasionally, I guess; I never saw him drinking any at all; it was none of my business what he drank. He had full charge of it.

Q. He had full charge of it? A. Yes, sir.

Q. Were the men given whiskey on the boat—these 153 soldiers given whiskey on the boat? A. I never saw any of that.

Q. You never saw any of that? A. No, sir.

Q. Where were you when the arms and men left the boat? A. I was on deck.

Q. Then you were off duty then? No, sir; I was on duty, but I was on deck at the time they left, because we were at anchor, and I couldn't stay down in the fire room; it was too warm.

Q. It was in your watch, but the vessel not being running you had nothing to do? A. No, sir.

Q. That is what you mean? A. Yes, sir.

Q. (Mr. OWENS.) Now, tell us how they went over? A. They went over—each one had a gun apiece and several men stood up in the stern of the boat with the gun to their shoulders.

Q. Well, did the boat lay to; did a number of them go over just in that way? A. I don't know how many went in each boat; I couldn't say.

Q. Well, but Cronin testified that 10 or 12 went over first in a little boat. A. Yes, sir.

Q. Do you remember that yourself? A. Yes, sir.

Q. You remember that, do you? A. Yes, sir.

Q. 10 or 12 went ashore? A. Yes, sir.

Q. And what did they do; do you know? A. No, sir; I don't know what they done.

Q. (COURT.) Did you hear any signal or firing—any gun firing or signal from the shore? A. There was one man fired a shot.

Q. (Mr. OWENS.) Did you hear that? A. Yes, sir; I did.

Q. You heard that? A. Yes, sir; I was on deck at the time.

Q. And then what happened? A. And then the boat came back, and they kept loading them up.

Q. They kept loading them up? A. Yes, sir.

Q. How many rifles were there on board the boat? A. I judge about four or five hundred.

Q. Four or five hundred? A. Yes, sir.

Q. And 153 men—150 or 160 men; A. I don't know how many men; they say there was a hundred and fifty.

Q. Well, what other ammunition was there? A. Boxes of cartridges.

Q. Where were they? A. They were all in the hold.

Q. All in the hold? A. Yes, sir.

Q. How did you know they were cartridges? A. Because they were strewn around the deck.

Q. Well, then, these boats must have carried a large number of these guns ashore as freight, didn't they; as freight? A. Yes, sir; there were 600 guns, or 400 or 500 guns.

Q. And only 150 men? A. Yes, sir.

Q. How did they carry these extra guns ashore? A. They put them in the bottom of the boats.

Q. They put them in the bottom of the boats? A. Yes, sir.

Q. And the ammunition? A. Yes, sir.

Q. They put that in the bottom of the boat? A. Yes, sir.

Q. Now, when these men disembarked, when these men went off the boat, how did they get off and get on the other boat? A. Why they just climbed right over the side and went in the small boats.

Q. They climbed over the side of the ship and went in the small boat? A. Yes, sir.

Q. Each fellow went in the boat as he thought it was his time, is that it? A. Yes, sir.

Mr. OWENS. That is all, Mr. Lockney.

Redirect examination.

Q. (Mr. MARBURY.) Did you see Gen. Roloff aboard the boat during the time you were there? A. Yes, sir.

Q. What was he doing? A. Oh, he was maneuvering around there, during this, because I couldn't understand him. He was a kind of a boss around there.

Mr. MARBURY. That is all.

WILLIAM A. LAWRENCE, called and sworn for the Government, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) State your name to the jury. A. William A. Lawrence.

Q. Do you live in Baltimore? A. I do now, yes, sir; I have been living at Newport News for the last 14 months.

Q. Where did you live in the summer of 1895? A. In Baltimore, sir.

Q. Were you on board of the "Woodall" on her voyage to Cuba? A. Yes, sir.

Q. How did you come to ship on that voyage? A. I shipped on the morning she sailed as assistant engineer for Progresso, Mexico; that is what the articles said.

COURT. You were the assistant engineer? A. Yes, sir.

Q. (Mr. MARBURY.) Who was the chief engineer? A. Mr. Mowbray.

Q. What sort of a looking man is Mr. Mowbray? A. Well, Mr. Mowbray, he is a man, I guess, two or three inches taller than I am, and not as stout, and then his face is rather dark complected; his complexion is darker than mine.

Q. He is ruddier than you? A. Yes, sir; he was at that time.

Q. You say you shipped for the voyage for Progresso, Mexico? A. Yes, sir.

Q. Well, where did you? A. Well, they told me I landed in Cuba; I don't know whether I did or not, only I was told it was Cuba.

Q. Now where did you first discover that you were going to Cuba? A. Not until we got the men and ammunition on board.

Q. Well, did anything happen on the way down there to create a doubt? A. Yes, sir; there was an air of mystery surrounded the whole proceeding after we got out of the bay, and I was told, and I noticed myself several times, but how down we were I don't know, that we had no lights up, and in fact we shaded our own lights.

COURT. You mean your lights in the engine room? A. One light in the engine room we had.

Q. (Mr. MARBURY.) You went straight down as far as this Harbor Key? A. Yes, sir; Panquai, or whatever it is.

Q. And then you took on the men? A. Yes, sir.

Q. What men did you take on or how many? A. Well, I couldn't tell the number, only from what I heard them say aboard the boat; I asked several of them how many they had aboard the boat, and they said there was about 150, and some said 153, I can't tell you exactly, sir.

Q. Well, a large number of men? A. Yes, sir.

Q. How did the men come aboard? A. Well, our small boats went ashore and some came in them and some came in two schooners.

Q. Who sent for them? A. Oh, now I can't tell you that.

Q. Did anybody go ashore from your ship, the "Woodall," before these men came aboard? A. A couple of our sailor men went first with this party that was called Henry.

Q. Who was Henry? A. He was supposed to be Mr. Miller's servant.

Q. Who was Mr. Miller? A. They called him also Gen. Roloff.

Q. And he shipped as Mr. Miller? A. Well, I don't know what he shipped as.

Q. But they told you he was Mr. Miller? A. He did not, but others did.

Q. At any rate he was called Mr. Miller? A. Yes, sir.

Q. Look at this picture and see if it looks anything like Mr. Miller that you speak of (handing witness photograph)? A. No, sir; that don't look like him to me.

Q. That does not look like him to you? A. No, sir; I wouldn't take that for Mr. Miller.

Q. We haven't a photograph; this is simply a cut from a newspaper. What sort of a looking man was Roloff?

Mr. OWENS. Well, no, ask him what sort of a looking man was Miller.

Mr. MARBURY. Well, call him Miller. A. Well, he was a man of very commanding appearance; a man, I judge, six feet, probably a few inches tall, stout in proportion, with a German cast of features, as far as I can judge of features.

Q. He was a very tall and very large man? A. Yes, sir; I suppose about the size of that gentleman there, Mr. Johnson.

Q. Well, what did he do on board the vessel? A. Well, he didn't do anything to attract any attention any more than I thought he was a planter, and I would have thought so yet if it was not for the arms coming aboard.

Q. You thought he was what? A. I thought he was a planter, as I say, until these men and arms from the shore came aboard, mind you.

Q. Until the arms came aboard? A. Yes, sir.

Q. What arms do you speak of? A. Well, the guns and ammunition.

Q. Were these men armed when they came aboard? Well, they all had a knife and a revolver with them; that is, all I paid any particular attention to I seen was armed with a revolver and a knife.

Q. Did they bring any other arms with them in the boat? A. When they came you couldn't tell whether they brought them; I inferred that they did not bring them because as they got out of the boat they passed the arms up, and I couldn't say that they were personal arms; there was not but one personal arms that I know anything about, and that was kept in my room.

Q. Outside of these revolvers and knives? A. Yes, sir.

Q. What sort of knives were they? A. Well, from a dagger that long up to the ordinary carving knives.

Q. Did you see any of these machetes? A. Some call them machetes and some *mashates*; I don't know what the correct pronunciation is.

Q. Were any of them armed with these? A. I seen the officers that were on the boat had them; whether any of these privates or soldiers had them I couldn't say.

Q. How many officers were there? A. There were three that I can recollect, besides the surgeon general; his name I did hear, but I couldn't say it; if I heard it again I don't think I could say it.

Q. Give us the names of them? A. They told me it was Roderiguez and Sanchez, and I can't think of the other name; Roderiguez and Sanchez, and I heard the other name yesterday, but I forget it now.

Q. They are all Spanish names? A. Yes, sir.

Q. Did anyone appear to be in command of these men; if so, who was it? A. There appeared to be no commander or no one in command to the best of my knowledge; if there was, they did not show up.

Q. Were you there when they came on board? A. Yes, sir.

Q. How did you know that these men were officers? A. Well, in fact I didn't know, only from what I was told.

Q. Of course you don't know anything except what you were told; how did you know; you were told they were officers? A. Well, they were more conspicuous looking than the rest and they kept forward amongst themselves, and naturally I asked who they were.

Q. Well, what did you find out? A. That they were officers.

Q. That is the way you found out they were officers? A. Yes, sir; that is the only way.

Q. Officers of the party? A. Of the Cuban army, I suppose.

Q. Of the Cuban army? A. Yes, sir.

Q. Well, I asked you just now to give me the names of these men and you mentioned Sanchez and Roderiguez, and was there a man named Maceo among them? A. Not as I know of; no, sir.

Q. There was no name of any Maceo? A. No, sir; not that I know of; I never heard his name.

Q. But Roderiguez, Sanchez and Roloff, as they called him? A. Yes, sir; that is the three.

Q. (Mr. OWENS.) Mr. Miller? A. Yes, sir; Mr. Miller.

Q. I know you mentioned Roloff, but haven't you stated that there was a man named Maceo amongst them? A. If I did, I don't remember saying it, and if there was, I don't remember hearing it.

Q. I don't know whether it is the same man that was killed afterwards, but there was one man named Maceo. How long did the voyage last?

COURT. What part of the voyage do you refer to?

Mr. MARBURY. After you took the men on board to Cuba?

A. I couldn't tell you the number of days; no sir.

Q. You were in the engine room most of the time when not on watch? A. I was probably in my own room and probably knocking around the deck; but, as a general thing, after I stayed my watch out, I turned in. We only had two watches; that is, the engineers.

Q. Under whose direction were the men sent ashore?

WITNESS. You mean the sailors?

Mr. MARBURY. When you got to Cuba.

A. Well, now, I couldn't tell you whose direction.

Q. You don't know? A. No, sir.

Q. What was done with the arms and ammunition? A. They were put in the boats?

Q. And went ashore with the men? A. With the men; yes, sir.

Q. In the small boats? A. Yes, sir.

Q. Was it day or night? A. The night, sir.

Q. Was it at any seaport, or was it out open? A. Well, it didn't look like a seaport to me; it looked like the bend of a horse-shoe shape, as far as I remember.

Q. A sort of a cove; it looked something like that? A. Yes, sir.

Q. Was it a wooded country; was it level or mountainous? A. You know it was dark, but it looked like mountainous to me; yes, sir.

Q. Well, after you landed the expedition, you sailed away to Progresso then? A. Yes, sir.

Q. And you stayed there a short time, and came from there to New Orleans? A. Yes, sir.

Q. Who paid you off? A. I was paid off; I supposed it must have been the United States Commissioner; we were paid off at the custom house there.

Q. And you got your regular wages? A. Yes, sir.

Q. Did you get some more after you left there? A. Not until we got to the train.

Q. And how much did you get then? A. $50.

Q. $50 apiece. A. Yes, sir.

Q. I forgot to ask you another question; when these men came aboard, and it was discovered that you were going to Cuba, was there any objections made on the part of any of the crew? A. No, sir; there was no objection made until after the men was landed; we had been to Cuba before any objection was made.

Q. When was this $20 paid? A. I was not in that at all; I was not even offered it.

Q. You did not get any of that? A. No, sir; not the $20; I was not even offered it.

Mr. MARBURY. The witness is with you, gentlemen.

Cross-examination.

Q. (Mr. OWENS.) Your name is Lawrence, isn't it? A. Yes, sir.

Q. Suppose you explained to the jury what you mean by being on watch and off watch; I just want you to explain that because I did not quite catch it myself. A. Going on watch, my watch was from 12 to 6 in the afternoon, and the chief's from 6 to 12, that is midnight, and then I came on at 12 and stayed until 6 in the morning, that is going on and going off. I went off at 6 in the afternoon and came on again at 12 at night.

Q. (COURT.) Six hours on duty and 6 hours off? A. Yes, sir; 6 hours off.

Q. (Mr. OWENS.) When you speak of being on watch you mean 6 hours, from 6 to 12, were your hours to work? A. My hours is supposed to be in the engine room at that time.

COURT. He is not absolutely working; he is responsible for the engine during that time.

Mr. OWENS. He is working during those hours.

COURT. He is not actually in manual employment all that time, but he is responsible for the engine, the engine and boiler. A. Responsible for everything in that department at that time.

Q. There were only two engineers at that time? A. Yes, sir.

Q. The chief and yourself? A. Yes, sir.

Q. Then you had how many firemen? A. Three, sir.

Q. (Mr. OWENS.) Who were the firemen? A. There was Lockney and Cronin and Sampson.

Q. What are you doing now? A. I was working for the Newport News Ship Building and Dry Dock Company; I was previous to being summoned for this case: I lost my position through this affair.

Q. You lost your position because you were summoned here? A. The idea was, I was to go out on one of the gunboats on the trial trip, and there had to be a lot of men laid off for the trial and probably I would have held on anyhow longer by going out on the boat; the boat is to be gone 10 days, and when I showed them the summons, in fact the engineer caught me in the yard, and they advised me if I could get a position in Baltimore, I had better take

it; it would hardly be worth while coming back for the present.

Q. Are you being paid now? A. No, sir.

Q. You don't get anything? A. Only what the marshal says the United States Government pays me.

Q. Only what the United States Government pays you? A. Yes, sir.

COURT. The regular per diem and attendance. A. The mileage and $1.50 per diem, as he told me; that is all.

Q. (Mr. OWENS.) That is all you get? A. That is all I get; yes, sir.

Q. You saw the men coming aboard, as you say; these 153 men come aboard? A. Yes, sir.

Q. And you saw the men go off? A. Yes, sir.

Q. And that was all; say how far were you from the men when they came aboard? A. Oh, well; sometimes I was right where they came aboard, and other times I was not. Probably we were laying under bank fires, and I would have to look after the steam and water and one thing and another occasionally, I couldn't spend my whole time amongst them.

Q. You were just as much surprised as anybody else to find these men there? A. Yes, sir; I didn't expect it.

Q. You didn't expect to to find them there? A. No, sir.

Q. How far were you from them when they disembarked? A. Well, about the same manner as when they embarked.

Q. How, you have stated, as far as you can recollect, all of the circumstances of their coming aboard and their disembarkation? A. That is as far as I can remember.

Q. As far as you can recollect? A. Yes, sir.

Mr. OWENS. That is all, sir.

Mr. MARBURY. We have nothing else to ask him.

JOHN EARECKSON, being produced on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) Where do you live? A. South Bond street, in Baltimore; down on the Point.

Q. What is your business; what is your profession? A. Sailor, sir.

Q. Were you employed on the steamer "Woodall?" A. Yes, sir.

Q. In the summer of 1895? A. Yes, sir.

Q. Did you go on this voyage to Cuba? A. Yes, sir.

COURT. What were you? A. Sailor, sir.

Q. Seaman? A. Seaman, yes, sir.

Q. (Mr. MARBURY.) I thought you were a fireman; you were not a fireman then? A. No, sir.

Q. You were just a seaman? A. Yes, sir.

COURT. What they call a seaman and deck hand on board? A. Well, seaman and deck hand.

Q. (Mr. MARBURY.) You were a regular seaman? A. Yes, sir.

Q. Well, do you recollect the time when you sailed from Baltimore? A. Well, it was the beginning of July.

Q. Do you remember any of the crew who were with you? A. Yes, sir.

Q. Give us the names of some of them? A. John Lockney, and John Croning, they were two firemen, and one fellow named Paddy was a firemen, and then Lawrence and the chief engineer—I forget his name—I didn't hear his name much because we call him always the "Chief," and then Captain Hudson, and the mate's name, I can't think of that either, but his name was John too. And Broncho Bill, a sailor, and a fellow named Jessie James, and Malinquist, and there was two other fellows on there, I forget their names, and there was a man on board named Miller, and a colored man named Henry, and they had a Stewart from a Baltimore, a colored man whose name was Johnson; that's all it was.

Q. Where were you born? A. At Sweden, sir.

Q. You were a Swede by birth? A. Yes, sir.

Q. How long have you been living in this country? A. About twenty years.

Q. Where did you suppose you were going when you started on this voyage? A. Going to Progresso, Mexico, and from there to Central America.

Q. Did you know you were going to Cuba? A. No, sir.

Q. When did you first discover you were going to Cuba? A. It came to me one evening when I was going to put the lights up, and they told me not to put the lights up; that was in the evening.

COURT. Was it your duty to put up the lights? A. Yes, sir; that night it was my watch on deck, sir. And we were going to put up the side lights of the ship and the mate told us not to put up no lights that night, so we didn't put none out, and then I had a suspicion it was going on some crooked racket, and I didn't know where she was going then not. That night we came to an anchor on one of the Florida Keys.

Q. (Mr. MARBURY.) Well, what happened then? A. We laid to anchor there all night, and the next morning about 9 or 10 o'clock we sent a boat ashore, and this Henry went ashore in this boat, and two seamen, and then late in the evening they came on board, and they had somewhere about 30 or 40 Cubans amongst them. I think that they looked like Cubans.

Q. How many of them were there? A. I couldn't tell exactly. I guess somewhere around 30 or 40.

Q. Were they armed? A. Yes, sir; they had pistols in their belts, and some of these cocoanut knives, the machets, as they call them.

Q. How many men came aboard altogether? A. Somewhere between 150 and 160.

Q. Did the rest of them have arms too? A. Yes, sir; most of them had a gun apiece, and one of these old-fashioned pistols, and the machet.

Q. Did they bring any other ammunition with them? A. No, sir; not in the boat.

Q. Did they bring any rifles? A. Yes, sir; some had rifles. I don't remember whether they had rifles, all of them.

Q. What was done with the rifles after they got them aboard? A. They put them aboard the ship.

Q. They put them aboard the ship; put them in the hole? A. Yes, sir.

Q. Well, what did they do with them afterwards? A. They kept them there until they landed in Cuba.

Q. Well, did you see Gen. Ruloff on board? A. Well, his name was Miller when he left Baltimore.

COURT. What did you see?

A. Yes, sir; I seen him aboard, but his name was Miller.

Q. When he left Baltimore? A. When he left Baltimore; yes, sir.

Q. What did he have to do with it? A. He didn't do anything; he was on board like a passenger.

Q. Well, did he have anything to do with these men when they came aboard? A. Yes, sir; he was talking freely to them in Spanish. We couldn't understand what he said. They were talking to him; they were glad to see him, and such things.

Q. Well, what did you see? A. The Cubans when they came aboard, they were glad to see him, the same like as if they knew one another.

Q. As if they knew one another? A. Yes, sir.

Q. Well, what happened when the crew of the "Woodall" found that all these men were coming aboard, these armed men? What took place? A. Well, they started to kick to the old man, Captain Hudson, and said that they didn't want to go on such an expedition as that.

Q. Didn't want to do what? A. Go on such an expedition as that.

Q. Didn't want to go on such an expedition as that? A. No, sir.

Q. Why didn't you want to go on such an expedition as that? A. Because we were afraid we would get captured.

Q. Captured by whom? A. By a Spanish man-of-war.

Q. What made you think a Spanish man-of-war was going to capture you? A. Because we knew there was war in Cuba.

Q. What did this have to do with the war in Cuba? A. Well, we thought these fellows were going down there to fight.

Q. What made you think so? A. Because they said so.

Q. Going down there to fight the Spanish? A. Yes, sir.

Q. Well, how were they dressed? A. Well, they were dressed like citizens, like people rather.

Q. Did they have any badges or flags on them? A. Yes, sir; they had small flags in their caps.

Q. Small flags in their caps? A. Yes, sir.

Q. What kind of flags? A. I think it was three blue and white stripes, and from each corner a red pennant, with a little star in the middle of it

Q. With a star in the middle of it? A. Yes, sir.

Q. Did Ruloff speak any other language besides Spanish? A. Yes, sir; he spoke English.

Q. Did he speak any German? A. Yes, sir.

Q. Can you understand German? Yes, sir; I understand some low German, yes, sir; I used to sail in German ships.

Q. Did you see this man Miller?

WITNESS: Whether I seen him myself?

Mr. MARBURY. Yes, sir.

A. Yes, sir; I seen him on board. He was working with the cook at Locust Point, and he came aboard; he was working in the galley.

Q. Working in the galley with the cook? A. Yes, sir.

COURT. That is the colored man Henry.

A. Yes, sir.

Q. (Mr. MARBURY.) He was a colored man? A. Yes, sir.

Q. And his name was Henry? A. Yes, sir.

Q. And I called him Miller? A. Henry.

Q. What did Henry do besides working in the galley with the cook? A. He wasn't doing anything extra, just helping the cook along.

Q. Do you remember the names of any of the officers of this expedition? A. Yes, sir; after we got them Cubans on board, Mr. Miller told them his name was Carlos Ruloff, and then there was a man named Sanchetz, and one named Mr. Brooks; that's all the names I can remember for sure.

Q. All that you can remember for sure? A. Yes, sir.

Q. (Mr. OWENS.) What was your last name that you mentioned? A. Mr. Brooks.

Q. How would you spell it? A. I don't know; it is an English name, sir.

Q. An English name? A. Yes, sir.

Q. The name was Brooks? A. Yes, sir; he said his father was an Englishman, and his mother was a Cuban.

Q. (Mr. MARBURY.) Now, did you hear any of these men whom you took aboard at Panquay or Harbor Key, whichever it is, state how long they had been at the Key before he took them on board the Woodall? A. Yes, sir.

Q. What had they been doing there? A. They had been drilling there, they said.

Q. For what purpose had they been drilling; did you hear them say?

Mr. OWENS. Of course, your honor, I renew the exception to that as I did before.

A. No, sir; they didn't say that.

Q. And you all made a kick, that you did not want to take these fellows to Cuba to fight against the Spanish, for fear of being arrested by the Spanish man-of-war? A. Yes, sir.

Q. What did the Captain do about it? A. He couldn't do anything but just let it go; he said he couldn't do anything about it now; he had to go, he said.

Q. What did Ruloff say? A. Mr. Ruloff didn't say much to us at this time.

Q. Were you one of the men who was offered the $20? A. Yes, sir.

Q. How many of the men were paid $20? A. Six.

Q. Well, could you find out from them who was the leader of this expedition; who was the commander? A. Well, the leader of the expedition was Carlos Ruloff.

Q. What ammunition did they take aboard? A. Rifles and cartridges and swords and machets, and dynamite and leather straps and belts.

Q. Leather straps and belts? A. Yes, sir.

Q. What sort of rifles were there? A. There were two kinds, Winchesters and Remingtons.

Q. What did they do with the rifles after they got them aboard? A. They put them down in the hole, sir; on top of the coal.

Q. Did you have any shoes among your stores on the "Woodall?" A. Yes, sir; we had a couple of boxes there.

Q. A couple of boxes? A. Yes, sir.

Q. What was done with them? A. They were in the hole until they got out two or three days. After they got these people on board they opened them, and gave them the shoes.

Q. They gave these people shoes, whom they had taken on board at the Key? A. Yes, sir.

Q. Distributed the shoes among them? A. Yes, sir.

Q. How did you get these fellows ashore after you got to Cuba? A. We put them ashore in our own boat.

COURT. Had you the usual number of boats aboard?

A. We had three, sir.

Q. Is that the usual number? A. Well, that is what we had with us from Baltimore.

Q. (Mr. MARBURY.) Who handled the dynamite when that came aboard? A. Me and another fellow, sir.

Q. What is his name; the other fellow's name? A. Milinquist.

Q. He is a Swede? A. Yes, sir.

Q. After you had landed the men, you sailed away then to Progresso, did you? A. Yes, sir.

Q. And from there to New Orleans? A. Yes, sir.

Q. And you remained in New Orleans how long? A. We were three days in quarantine there.

Q. And then when you got into port, you were paid off? A. No, sir; not the first day; we were there two or three days.

Q. You were there two or three days before you were paid off? A. Yes, sir.

Q. And then you were paid off? Yes, sir.

Q. Were you also paid the extra fifty dollars? A. Yes, sir.

Q. Where did you go from New Orleans? A. To Baltimore, here.

Q. You came straight on to Baltimore? A. Yes, sir.

Q. I forgot to ask you just about the landing of these men; were they landed during the night? A. Yes, sir.

Q. And landed in Cuba, on the coast? A. Yes, sir.

Q. Did they all go ashore at once, or did you send somebody ahead? A. We sent two boats ashore at first with men, with just a rifle and a pistol apiece, and we had the other boat underneath our bow loaded down with dynamite; they would not send him ashore before they saw it was all right on the shore; and so they fired a gun, and when that gun went off, they told us to put it ashore.

Q. They gave you the signal that the coast was clear, and you then went ashore?

Q. Under whose direction was the landing made? A. The first man went ashore, Sanchez went ashore, and then Carlos Ruloff was the last man.

Q. Carlos Ruloff was the last man to leave, was he? A. Yes, sir.

Q. Did he give any directions? A. He was in the boat, you know, and we were on deck, and we could hear him talk and speak in Spanish. I couldn't tell you know.

Q. Speaking Spanish to these men? A. Yes, sir.

Mr. MARBURY. I think that is all, Mr. Owens.

Cross-examination.

Q. (Mr. OWENS.) Mr. Erickson, you say you are a Swede? A. Yes, sir.

Q. Where were you when the first boat went ashore to Cuba?

WITNESS. When the first boat went ashore?

Mr. OWENS. Yes, sir.

A. I was in the front boat; yes, sir.

Q. You were in the front boat? A. Yes, sir; we had three boats, and there were two in the other boat.

Q. Where was this boat? A. It was on the starboard side.

Q. On the starboard side? A. Yes, sir.

Q. Did the other two leave from the same side? A. No, sir; they left on the port side.

Q. Then you do not know by whose direction the other two left, do you; you do not know by whose order the other two left? A. No, sir.

Q. What did you have in your boat? A. Dynamite.

Q. Who was in your boat with you? A. Malinquest.

Q. How do you spell that name? A. M-a-l-e-n-q-u-e-s-t.

Q. You and Malenquest put the dynamite aboard, and you and Malenquest put it ashore, is that so? A. Yes, sir.

Q. What are you doing now, Mr. Erickson? A. I have been away in one of Morton Stewart's vessels for Brazil, and I came home, and I am not doing anything.

Q. When did you get home? A. About six weeks ago, sir.

Q. When you got back, did you intend to reship somewhere? A. I intended to go back in the same vessel.

Q. Why didn't you? A. A man told me I had to stay here.

Q. Who told you you had to stay here? A. Mr. Douglas, I think his name was.

Q. Mr. Douglas told you that you had to stay here? A. Yes, sir.

Q. Why did he tell you you had to stay here? A. To go to court.

Q. Did you have to stay here six weeks to go to court? A. To wait on the trial, yes, sir; I had to wait here until the trial came off, sir.

Q. Well, then, now you say it has been six weeks ago since you got back? A. Yes, sir.

Q. Have you had any employment in these six weeks? A. No, sir.

Q. You haven't been doing anything? A. No, sir.

Q. How do you live? A. They pay me twelve dollars a week while I am waiting for this trial.

Q. They pay you $12.00 a week? A. Yes, sir.

Q. Who is they? A. I don't know who they are; a man named Mr. Gaylor sends the money to me, but I don't know who pays him.

Q. Do you know who Mr. Gaylor is? A. Yes, sir; he is from Philadelphia, I believe.

Q. He is in Philadelphia? A. Yes, sir.

Q. What is his occupation? A. I don't know, sir; I never seen him?

Q. What is Mr. Douglas's occupation? A. I don't know whether he is a lawyer or a detective; I don't know which.

Q. He is either a lawyer or a detective? A. Yes, sir.

Q. Where were you standing when these men came aboard, down at Harbor Key? A. I was on deck, sir.

Q. On deck; where? I am trying to get how near you were to the men; that is what I am trying to get at.

COURT. They didn't all come together.

A. I was standing at the main rigging when the boat came alongside.

Q. Looking down at the boat? A. Yes, sir; just coming on deck, and by the painter, when the boat came alongside.

Q. Well, now, how far from the party of men that came on the boat were you; how far were you from the men when they came on board? A. Three or four feet.

Q. And the crew were standing there with you? A. I don't remember that, sir.

Q. Well, you remember that anybody else was there beside yourself? A. Two of the seamen were in the boat.

Q. Two of the seamen was in the boat? A. Yes, sir; and one fellow named George—George, I think; I forget his name; he was an Englishman; and the other fellow was Bronco Bill—them two was in the boat.

Q. Were there any others that belonged aboard the vessel that were standing there at that time? A. Well, sir, they were all on deck, but I don't remember where they were standing at.

Q. Now, I understand you said that Gen. Ruloff or Charles Miller, as you call him, was on the boat? A. Yes, sir.

Q. And of course Captain Hudson was on the boat? A. Yes, sir.

Q. And there were sixteen in the crew too, you say? A. Yes, sir.

Q. About 15 or 16? A. Yes, sir.

Q. Now, you were surprised to see these 150 men there, were you not? A. Yes, sir.

Q. And the crew was just as much surprised as you were? A. Every one of them.

Q. Well then, can't you tell how many of this crew or the officers, or anybody, were around there when they came aboard? A. No, sir; I can't remember, it is so long ago.

Q. You only remember then? A. I remember the captain and Ruloff was at the forward house, and went in the forward part of the ship, in the cabin.

Q. They were in the forward part of the ship; in the cabin? A. Yes, sir; and when the men came over the rail, Mr. Ruloff went up and shook hands with them.

Q. How did these men get aboard of your boat? A. Well, they pulled them aboard.

Q. Speak a little louder, won't you, I want the jury to hear you. A. Two seamens went ashore with the boat, and they came in the

boat. I don't know how they got hold of them on the shore there. I was not ashore.

Q. No; but how did these men come aboard of your boat? Where did they come from; what did they step out of to get in your boat, that is what I am asking. They couldn't step out of the water; where did they come from?

COURT. When he went ashore for them?

Mr. OWENS. No, sir; when they came from the shore, did they come out from the boat; I want to know how they were put aboard of that vessel? A. The men was in the boat, and they came from the Key, from the bank.

Q. What kind of a boat? A. The ship's boat, a square stern boat.

Q. Did these men get out of the ship boats? A. Yes, sir.

Q. All of them? A. No; not all of them.

Q. That is what I want to get at. A. Between 30 or 40, probably; something like that.

Q. 30 or 40 got out of the ship's boat? A. Between 30 or 40, something like that, got out of the boat.

Q. Where did the others come from? A. They came from schooners that came alongside that night, schooners and a sloop.

COURT. Did you go ashore in any of them?

A. No, sir.

Q. (Mr. OWENS.) What did these boats bring besides some men? A. They brought ammunition, sir.

Q. They brought ammunition? A. Yes, sir.

Q. In what shape did the ammunition come aboard? A. It came in bags, the cartridges came in bags.

Q. What kind of bags; let us hear that; let us hear that talk about these bags; just describe them? A. They looked something like coffee bags with a tie in them, two bunches, and the middle of it was a string to take them on the shoulder and carry them away.

Q. They were like bags, you say? A. Yes, sir; something like a coffee bag.

Q. You say a coffee bag? A. Yes, sir.

Q. I thought he said like a carpet bag. You say when they disembark that ten or twelve men went ashore first in boats, and they fired a gun? A. No, sir; it was more than that, sir; I don't know how many it was, but it was a good deal more than that went ashore on two boats.

Q. Did you see the other boats that went ashore? A. Yes, sir; and we got them ready when they were going ashore.

Q. What did they have in them? A. Well, I couldn't tell you what they had in the boat; they taken loose stuff ashore.

Q. They took loose stuff ashore? A. Yes, sir; like rifles and swords and things.

Q. When you spoke of the word officers—you used the word

officers in your testimony, why did you call them officers? A. Well, I call the captain an officer; I call the captain and the mate an officer.

Q. When you speak of officers, the officers you refer to are the captain and the mate? A. No, sir; I mean Ruloff and Sanchez are the two officers.

Q. Why do you call them officers? A. Because the Cubans call them officers; call them general.

Q. They called them generals? A. Yes, sir.

Q. Was there any reason why you should call them officers; except that they said they were officers? A. No, sir.

Q. When they called them officers, you understood them to mean they were officers in the Cuban army, didn't you? A. Yes, sir.

Q. In the present war or the last war? A. In the last war.

Q. There is war in Cuba, then, is there? A. Well, the way I have heard; I have never been ashore there.

Q. They insist there is not, that is the only thing. Then the only reason that you call these men officers is because the Cubans said they were officers? A. Yes, sir.

Q. That they were officers in the Cuban army? A. Yes, sir.

Q. What did these men do on board of the boat; all these 153 men that you talk about? A. They were not doing anything, sir, but helping us coal up when we were shifting coal with the machine.

Q. They behaved themselves right well, didn't they? A. Yes, sir.

Q. And were very orderly people? A. Yes, sir.

Q. Was there any whiskey aboard of that boat? A. Yes, sir; they had some in the cabin, a kind of a light rum they call it, I believe.

Q. White rum? A. Yes, sir.

Q. Did you get any of that? A. Yes, sir.

Q. Was it generally distributed among the men? A. Well, they used to give us two or three drinks a day.

Q. They used to give you two or three drinks a day; who gave it to you? A. Henry gave it to us.

Q. When you got it Henry gave it to you? A. Yes, sir.

Q. Did Captain Hudson drink any during that voyage? A. I don't know, sir; I can't tell whether he drank any.

Q. You cannot tell? A. No, sir; I didn't see him drink.

Q. Did you ever see him during that voyage when you supposed he had been drinking? A. No, sir; I didn't see anything out of the way with him.

Q. How long were you aboard of this vessel in Baltimore before she sailed? A. Only one day, sir.

Mr. OWENS. That is all.

Redirect examination.

Q. (Mr. MARBURY.) Was Captain Hudson a good navigator? A. Yes, sir; I think he was a good navigator.

Mr. MARBURY. That is all.

Mr. OWENS. With your honor's permission; there is one question I would like to ask the witness preceding this one.

W. A. LAWRENCE, recalled.

Direct examination.

Q. (Mr. OWENS.) When you spoke of the officers in your testimony in chief, I intended to ask you—you spoke of them simply because the Cubans spoke of them as officers, didn't you? A. That is all.

Q. Did you see much of Captain Hudson during this trip? A. Yes, sir; I seen him.

Q. Did Captain Hudson drink anything? A. Well, Captain Hudson and myself has taken a drink together.

Q. I am not talking about that. A. You mean exceptional?

Q. Did you ever see him when you supposed he was under the influence of liquor? A. Well, I cannot say that I did.

Q. You cannot say that you did? A. No, sir; that is, aboard the ship.

Q. Did you ever see him at any other time when you thought he was under the influence of liquor?

Mr. MARBURY. What has that got to do with it?

Mr. OWENS. I will follow that up. Just one minute. Must I tell you just what I want to ask him?

A. Well, off the ship; well, off the ship it was impossible to tell, because I was under the influence myself in New Orleans; that is the reason I am not able to judge what his condition was.

Q. You and he were together then after that? A. No, sir; we were not together, but I seen him several times on the street in New Orleans, but whether he was intoxicated or not, I cannot tell; I know I was.

Q. You know you were? A. Yes, sir.

Mr. OWENS. That is all I want to ask you.

Mr. —— CLARIDGE, a witness called, but did not answer.

Mr. MARBURY. I want to recall Captain Hudson before I close the case.

Captain HUDSON recalled.

Direct examination.

Q. (Mr. MARBURY.) Captain, the question that I intended to ask you, or started on it, and then I stopped, I didn't know it had anything to do with the case. I find on page 53 of this testimony that you testified in answer to a question as to how you first happened

to meet Dr. Luis, you say that "Dr. Luis about March, 1895, wrote to Smith asking him if I was there, and if he saw me, and so on," and there you were interrupted and after that I proceeded no further.

Mr. OWENS. I objected to that.

Mr. MARBURY. I know you did, and it was not pressed, but now I do want to press it, because I did not know it was of any importance. Where is Smith? A. I don't know, sir.

Q. He has not been found? A. He has skipped.

Q. He has skipped; that is the short word for it. We have not been able to get him; he is under indictment too. Now, did you see that letter from Dr. Luis to Smith, which you referred to in this testimony here? A. Yes, sir.

Mr. OWENS. I object to that; where is the letter?

Mr. MARBURY. I don't know; I suppose the letter is with Smith. I want to prove what the letter was. It was a letter, if your honor pleases, which the traverser here wrote Smith, John P. Smith, asking him where Captain Hudson was, and telling him the purpose for which he wanted him. I did not know that that was in the letter or I would have pressed the question at the time when it first came up, but now I do want to prove the purpose for which Captain Hudson was wanted by Luis as disclosed in that letter; the letter, it being impossible to obtain it, of course, on account of the disappearance of Smith, it is in the possession of Smith, who is a fugitive from justice himself, whom the Government has not been able to find and of course we cannot find the letter, and I should think that we have laid a sufficient foundation for proving the contents of this letter.

GEN. JOHNSON. The proposition is that we shall use his testimony of what is in that letter against Dr. Luis; it is the most extraordinary proposition that I have ever heard.

COURT. It is stated to be a letter written by the traverser himself.

GEN. JOHNSON. I say so; yes, sir; it is taking the statement of this witness as to what he said this traverser wrote. If you have anything he wrote, produce it in court.

COURT. The question is asked, did he see the letter; did he read the letter?

Mr. MARBURY. Yes, sir; he says he did. Now, I want to ask him about it.

COURT. Captain Hudson, did you say you read the letter? A. I did, your honor.

Q. Do you know whose handwriting it was? A. Yes, your honor.

Q. Well, whose? A. Signed by Dr. Joseph Luis.

Q. Do you know his handwriting? A. Yes, sir.

Q. Was it his? A. Yes, sir.

GEN. JOHNSON. Well, then, produce the letter.

Mr. MARBURY. I say we cannot produce the letter.

COURT. Do you know what became of the letter? A. Smith may know, sir.

Q. Whose letter was it? A. It was from Dr. Luis to Smith; he wrote him asking him for Captain Hudson.

Mr. OWENS. Did you know the handwriting of Dr. Luis at that time?

Mr. MARBURY. Just ask him?

Mr. OWENS. He hears well enough; he can't talk but he can hear.

Mr. MARBURY. You are very much mistaken if you think he can't talk? A. Yes, sir; I have seen that handwriting before.

Mr. MARBURY. And have seen it often since? A. Yes, sir.

Q. Can you tell us then whether that letter you saw was in his handwriting? A. Yes, sir, it was.

Mr. OWENS. Of course, we object to all this testimony.

Mr. MARBURY. I will ask the question; don't answer it until the time comes. I will ask the question whether that letter disclosed the purpose for which Luis wanted you?

GEN. JOHNSON. I object to that.

COURT. Ask him whether he remembers the contents of the letter?

Mr. MARBURY. Do you remember the contents of the letter? A. I can't remember them verbally, word for word.

Q. Do you remember the substance of it? A. I do.

Q. Well, can you tell us what it was?

Mr. OWENS. It seems to me it is exceedingly unjust; the questions of law are involved in this case, as your honor is aware, very narrow, and any misstatement this man might make as to the contents of the letter might be very serious. The letter is not here; he said he did not remember of having it, and he is asked by the counsel for the prosecution here to state what he supposes to be the substance of the letter.

COURT. Did you read it yourself? A. I did, sir; I had it in my hand.

Mr. OWENS. But mark you, the letter was written—if there was such a letter it was written prior to 1895; prior to July, 1895.

Mr. MARBURY. Of course, it was written in March, 1895.

Mr. OWENS. And he is asked two years after this transaction to state the contents of a letter he himself admits he cannot state verbally.

COURT. If he stated that he could, I would think it was very much against him, but of course the jury are to weigh the testimony, they are to give such weight to it as they think it is entitled when he undertakes after that lapse of time to give the substance of it.

GEN. JOHNSON. Is there any rule of law, your honor, by which a man can testify to the contents of a written letter. I think you ought to produce the paper itself.

Mr. MARBURY. Or account for its nonproduction.

Mr. JOHNSON. Or account for its loss. It is not in our possession; we have nothing to do with it. It is sometimes, when the other party has possession of a paper and won't produce it, then you can testify as to the contents of a paper, but as to a paper that we have nothing to do with, have no connection with, for them to bring him here to testify to the contents of it, I think it is unfair, may it please your honor, and I don't think my brother will find a case like that in the books.

COURT. This, as I understand it, is something that was said by one of the parties charged with being in the agreement, or confederacy, or conspiracy, to one of the others. If it was a declaration that was made by Dr. Luis personally to Smith in the presence of Hudson, he could state it.

Mr. MARBURY. Yes, sir.

COURT. Now he says that here was a letter, which he recognizes as being in the handwriting of Luis, written to Smith, and which he read. Of course, how far the jury can rely upon his recollection of it is a question for them in weighing the testimony, but that it is competent it seems to me is clear. Of course, if the letter could be produced, it should be produced, but if it is in the hands —if it is where it should be, it is in the hands of Smith.

Mr. OWENS. We cannot produce it at all, nor contradict it in any way; we have no way of contradicting this man's verbal statement; none in the world.

COURT. Just the same way you have if it was an account of what Luis had said, a verbal declaration.

Mr. MARBURY. You have your client here; he wrote the letter, and he can tell you whether he wrote such a letter or not.

COURT. I think it is competent.

Mr. OWENS. We reserve an exception.

Mr. MARBURY. Tell us what was in the letter.

A. Well, it was a very short letter, on note paper. It didn't cover a page. He wrote to Smith: "My dear Smith:" These are the words as near as I can remember them. "Do you know whether Captain Hudson is in town? If he is, find out if he will take another party, and let me know." That is about all.

Q. And that was in March, 1895? A. As near as I remember, sir.

Q. Was that the first intimation you had that he wanted you for this expedition? A. Yes, sir.

Q. It was after that that you saw Smith and Luis at Smith's office? A. I didn't meet Smith until June; I met him about the middle of June; I meant the Doctor, not Smith; I meant the Doctor. I was at Smith's office every day.

Q. You told them that you were willing to take another party? A. Yes, sir.

Q. Had you ever taken a party before? A. Yes, sir; in the "Hornet," from Colon to Cuba.

Q. Did Luis know that you had taken the "Hornet?" A. Yes, sir.

Q. What was the nature or character of the party that you had taken in the "Hornet?" A. They were Cubans.

Mr. OWENS. If your honor thinks this is admissible, it is no use to ask the question. He said another party; I want to see what kind of a party the first one was.

Mr. OWENS. He is putting his own construction on words which he has testified to there.

COURT. I think the objection is proper to sustain.

Mr. MARBURY. He said in this letter: "Will Captain Hudson take another party." Now Captain Hudson says that the only other party he had ever taken prior to that time was the party in the "Hornet," and Luis knew what that party was. Now, I want to show that that party in the "Hornet" was just the kind of party that is charged in this indictment, and, therefore, he was asking if he would take another party of that kind.

COURT. I think you will have to rest upon the testimony as already in. He has, in his testimony before, spoken about the "Hornet."

Mr. MARBURY. Well, that is true; he described the "Hornet" before; that makes it evidence. That is all, Captain.

Cross-examination.

Q. (Mr. OWENS.) You recollect the contents of that letter, do you? A. As near as possible.

Q. When was that letter written? A. That was written some time in March, 1895.

Q. When? A. 1895; that is as near as I can remember, sir.

Q. You said that you remembered so distinctly the contents of that letter, and yet you stated here that you could not say what statement you made to Ruloff at the City Hotel in the July subsequent to it?

COURT. What statement do you refer to?

Mr. OWENS. The reports that he made to Ruloff at the City Hotel.

COURT. You mean the reports he made from day to day?

Mr. OWENS. Yes, sir; the reports that he made from day to day. I think I am entitled to ask that to test the witness' power of recollection.

COURT. Well, I want him to understand the question.

A. Well, the reason why I can't remember from day to day was because I had so much to do here, and I really cannot remember the details now; but the letter was something of special importance; I couldn't forget that.

Q. Then, Captain Hudson, we understand you to say, that even

now you cannot recollect the reports of the conversations that you had with Ruloff in the City Hotel? A. I told you before, sir, that I made the reports from day to day of what I had done, and what I wanted to do; but I could not remember the different items; we were talking about various things.

Q. And you cannot remember exactly the language, or substantially the language that you used in any of these reports, can you? A. Well, it is general.

Q. And you cannot remember substantially the conversations that you held with Ruloff, can you?

Q. Well, now, in order that the jury may have an idea how far you recollect, what do you recollect? A. I recollect him telling me I had to go to Harbor Keys to get the men, and he was taking this negro pilot along with him.

Q. You remember that? A. Certainly.

Q. Well, did he tell you that at the City Hotel? A. Yes, sir.

Q. And that is all you do remember? A. There is so much; if I might only be put in mind of it, I might remember it.

Mr. OWENS. Well, that is all.

Mr. MARBURY. That is all with Captain Hudson. I have one or two short witnesses in the morning, your honor, and I think we will close our case.

Whereupon, at this point, the court adjourned until 10 o'clock to-morrow morning.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES
vs.
J. J. LUIS.

BALTIMORE, March 25, 1897.

Third Day.

Pursuant to adjournment, the court resumed its session at 10 o'clock this morning.

JOSEPH B. CLARIDGE, produced on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) What is your business? A. Our business is that of wholesale groceries and ship chandlers—the fitting out of vessels.

Q. Where is your place of business? A. At the corner of Gay and Pratt streets.

Q. Did you see Captain Hudson, who was on the stand here yesterday? A. Yes, sir.

Q. Do you recollect selling any ship's stores or provisions to him in the summer of 1895? A. Yes, sir.

Q. Please tell us what they were? A. They comprised a general list of stores that any vessel would take for a voyage of that kind; of course, there was more than they generally take. It consisted of canned beef, pork, barrelled beef, flour and dry stores, and a lot of stores for the engine room, water, casks, and such things as that.

Q. Rather a larger amount than a ship generally takes? A. Yes, of some things and a good deal smaller amount of others.

Q. There is one thing I want to ask you about particularly; did you sell Captain Hudson any shoes, or boxes of shoes? A. No, sir.

Q. There were no shoes at all in the stores that you sold him? A. No, sir; no shoes at all.

Q. Captain Hudson did not buy any shoes at all from you? A. No, sir; no shoes were mentioned at all.

Q. Were there any stores sent to your place for shipment or delivery to the vessel, besides those that you sold? A. That I could not say. There may have been, but I could not say for sure. I had no knowledge at all about it. I have looked over my receipts and there is nothing on the receipts except the things we furnished, no packages, or trunks or anything else for the captain.

Q. They did not include any shoes at all? A. No, sir; they do not include any shoes at all.

Did Capt. Hudson come personally to order these things? A. Yes, sir; he ordered everything himself with the exception of a few stores ordered by the chief engineer.

Q. Who was the chief engineer? A. I don't know his name, but I have his name on this list here, if you will allow me to look at it.

Q. You can look at it to see what it is. A. He was a man by the name of Monhay.

Q. Is it not Mowbray? A. Yes, I believe it is.

Q. Tell us a little more circumstantially about the character of the stores that you furnished? A. The heavy stores were four barrels of beef, three barrels of pork, five barrels of flour; there were four hundred pounds of canned beef, probably twelve or fifteen cases of clams, lobsters, salmon, and those things; beans, peas, rice, coffee, tea, condensed milk, &c.

Q. A complete list of ship's store? A. It amounted to between five and six hundred dollars.

Q. Did you know at that time what was the voyage for which you supplied this vessel? A. We cleared her for Progresso, Mexico.

Q. What kind of a voyage was she supposed to be going on? A. As far as we knew she was going there.

Q. I suppose you had a talk with the captain? A. No, sir; not a word; I never said a word to Capt. Hudson, except about the ordering of the stores. We put them aboard, and I went down to the City Hotel and saw him and got my money; that was all that was said between Captain Hudson and me—only with reference to business about the stores.

Q. Who paid the money at the City Hotel? A. Captain Hudson.

Q. Do you know who was there with him? A. Nobody.

Q. Nobody that you knew? A. Nobody that I knew. I met him in the dining room and he and I went up to his room and he paid me the cash money for the stores.

Q. You did not deal with anybody but Hudson? A. I never saw anybody else there at all, and I never knew anybody else in the deal except Capt. Hudson.

Cross-examination.

Q. (Mr. OWENS.) What was the exact amount of the stuff that you sold Captain Hudson? A. Twelve hundred and thirty-eight dollars and some cents, if I remember right.

Q. Did you give Capt. Hudson anything? A. I gave Capt. Hudson, I think, twenty-four dollars and some cents.

Q. What did you give it to him for? A. Just as a present, the same as I do all captains; that is all.

Q. (Mr. MARBURY.) To encourage him to come again? A. Yes; for that reason sometimes, and sometimes for good fellowship. Sometimes I give them cigars, and sometimes a gallon of whiskey. I gave him something on the water bill and something on our bill.

Q. What do you mean by the water bill? A. A man by the name of Fitzgerald furnished the water and it is always customary to give something off the bill.

(Mr. OWENS.) You mean that you paid the water bill? A. Yes.

Q. I don't understand about this water bill. A. It is for filling the tanks on the vessel with water to drink; they can't use salt water; they have to use fresh water.

Q. Who gets the money for it? A. The man on the water boat.

Q. You paid that bill? A. Yes, I paid it for him. I collected it from Captain Hudson and paid it to Mr. Fitzgerald. I think there was only $8 or $9 that I gave him off that bill, and on both bills together it amounted to twenty-three or twenty-four dollars and some cents.

Q. You did not furnish the coal? A. No, sir; I didn't have anything to do with the coal at all; I don't know who furnished the coal.

Q. When you went up to the City Hotel you did not see anybody but Captain Hudson? A. Not a soul.

Q. You went upstairs to his room? A. I went upstairs to Captain Hudson's room and he paid me the money, and I bid him good-bye and left him.

Q. You saw nobody else? A. No, sir; I did not see anybody else; I didn't know anyone else was stopping there.

Q. (COURT.) You spoke of the sum of $1,200; does that include coal? A. No, sir; that includes the engineer's stores, the deck stores and groceries.

Q. Mr. OWENS. It includes what? A. The engineer's stores, the deck stores and the groceries; they are divided into three parts.

Q. You have the bill in your pocket? A. No, sir; I have not got the bill, but I have got the receipts in my pocket; I just brought them up here to see if there was any trace of trunks or boots and shoes.

Q. You did not bring a memorandum showing how much money these articles had cost? A. No; but I have got it at the store. I was not asked to bring it, and did not think there was any need to bring it.

Q. Why did you come up here with only one-half of the necessary memoranda? A. I was not asked to bring anything up here in the first place.

Q. (COURT.) What do you mean by that question?

Mr. OWENS. He says he was brought up here to testify whether or not any boots or shoes were bought from Loud and Claridge.

COURT. Whether they were sent aboard by them.

Mr. OWENS. Yes; and he only came here armed with the necessary papers to testify to that.

WITNESS. They would not be on our bills, but they might be on our receipts. For instance, I often sent packages aboard for the captains and put on the receipts, among our stores, "Packages for the Captain," and have them signed for.

Q. (COURT.) You say you have the receipts with you? A. Yes, sir.

Q. You mean the receipts that were given at the vessel? A. The receipts that were given at the vessel and signed by the mate, for these things.

Q. You brought the receipts showing that you delivered them? A. Yes, sir.

Q. (Mr. OWENS.) They do not show what the cost of the things was, do they? A. No, sir; we never put that on the receipts. Just put down the articles. We put down "Four barrels of flour;" but there is no price there.

Q. When you were sent for to come here and testify, did you not expect to be required to testify with reference to the sales made by you to this vessel? A. No, sir; not in dollars and cents.

Q. And because you did not expect to testify in dollars and cents, you did not bring along with you a memorandum which would

show what you did sell? A. Yesterday, when I left the court room, I went into the district attorney's office and had a talk with him, and he said the main thing I would be required to testify about would be about some trunks and some boxes of shoes. The only way that would be shown would be by the receipts going from us for stores aboard the vessel. They would not show on our bills. They would only show on the receipts. There is nothing on the receipts about packages or trunks. The only thing on our receipts is such stores as were sold to Captain Hudson.

Q. Could you not have found out from your books exactly what stuff you furnished? A. Certainly I could by looking at them.

Mr. MARBURY. He can do that now; he can go down to the store and get it.

Q. (Mr. OWENS.) Could you not have found out from your books exactly how much money you paid Capt. Hudson for purchasing the goods?

COURT. How much of a gratuity he gave him?

WITNESS. Yes, sir; I can.

Mr. OWENS. He says he gave Captain Hudson some money as a gratuity.

COURT. As a gratuity or a commission or a deduction from the bill.

WITNESS. Just as a present; it was not a commission at all; it was just a present.

COURT. If you looked at your books could you say how much it was? A. I can tell you exactly now. I gave him twenty-three dollars twenty-eight cents, because I gave him $15.28 off of our bill, and $8 off the water bill. Our bill was $1,238.28 and he paid me $1,215, I gave him the odd cents, and $23.

Q. The amount of your bill was how much? A. $1,238.28.

Mr. MARBURY. We have two more witnesses to examine; but while we are waiting for them, we desire to offer in evidence, the proclamation of the President of the United States, with reference to the duties and obligations of American citizens towards the belligerent parties in Cuba. I understand there is no objection on the other side.

Mr. OWENS. We think it is rather late, but we have no objection to it.

Said proclamation is as follows:

"Neutrality—Cuba."

By the President of the United States.

A Proclamation.

"WHEREAS, The Island of Cuba is in a state of serious civil disturbance, accompanied by armed resistance to the authority of the established government of Spain, a power with which the United

States are, and desire to remain, on terms of peace and amity; and

"WHEREAS, The laws of the United States prohibit their citizens, as well as others being within and subject to their jurisdiction, from taking part in such disturbances adversely to such established government by accepting or exercising commissions for war-like services against it by enlistment or procuring others to enlist for such service, by fitting out or arming, or procuring to be fitted out and armed, ships of war for such service, by augmenting the force of any ship of war engaged in such service, and arriving in a port of the United States, and by setting on foot or providing or preparing the necessary means for military enterprises to be carried on from the United States against a territory of such government.

"Now, therefore, in recognition of the laws aforesaid, and in discharge of the obligations of the United States towards a friendly power, and as a measure of precaution, and to the end that citizens of the United States and all others within their jurisdiction may be deterred from subjecting themselves to legal forfeitures and penalties.

"I, Grover Cleveland, President of the United States of America, do hereby admonish all such citizens and other persons to abstain from every violation of the laws hereinbefore referred to, and do hereby warn them that all violations of such laws will be vigorously prosecuted, and I do hereby enjoin upon all officers of the United States charged with the execution of said laws the utmost diligence in preventing violations thereof, and in bringing to trial and punishment any offenders against the same.

"In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and nineteenth.

"(Signed) GROVER CLEVELAND.

"By the President.

"RICHARD OLNEY,

"*Secretary of State.*

"Department of State, March 24, 1897.

"(A true copy.)

"ANDREW H. ALLEN,

"*Chief Bureau Rolls & Library.*"

Mr. MARBURY. I also desire to offer in evidence the proclamation of the President of the United States of June 27th, 1896. We are entitled to offer it on the separate ground that it shows the fact, of which the court may take judicial notice, of the existence of a state of insurrection in the island of Cuba, that being, of course, quite

an important fact in this case. This is an official recognition of the existence of such relations with the Kingdom of Spain.

Mr. JOHNSON. Are you going to offer that in evidence?

Mr. MARBURY. I offer it in evidence for that purpose. I can read it to the jury in argument.

COURT. What is the date of it?

Mr. MARBURY. The date is July 27th, 1896.

Mr. JOHNSON. These transactions occurred in 1895. There is no law by which the President can make a proclamation to affect antecedent transactions.

COURT. I understand that the purpose of the district attorney in offering the paper is simply to show that the United States were at peace with Spain, and that there was a state of insurrection in the island of Cuba.

Mr. JOHNSON. It cannot prove the fact that in 1895 the United States was at peace with Spain, because the United States may not have been at peace with Spain in 1895.

Mr. MARBURY. The proclamation recites a pre-existing state of facts.

COURT. I sustain the objection. The proclamation of 1895 declares that the Government of Spain is at peace with the United States, and that there is a state of insurrection in Cuba, and the presumption would be that it was continuous.

Mr. MARBURY. One of them is sufficient for my purpose.

Mr. JOHNSON. I think your honor is a little inaccurate in quoting that proclamation. I think the language is that "there is a state of serious civil disturbance in the island of Cuba." The administration has steered clear of the question of insurrection and never have recognized a state of war in the island of Cuba. That has always been the *bete noir* in the way of the administration.

COURT. I used the words in the sense of "a civil disturbance."

Mr. MARBURY. You can call it the late unpleasantness, or anything else you choose.

RICHARD J. BLOCKSAM, produced on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) You are connected with the Western Union Telegraph Company? A. Yes, sir; as manager.

Q. You have been manager for several years, I believe? A. Yes, sir.

Q. Do you keep at your office any record of money transmitted by telegraph? A. Yes, sir.

Q. Have you any record of money received from New York through your company, by any parties in Baltimore, by the name of Luccas or Miller, in June, or the early part of July, 1895? A. How do you spell the name?

Q. L-u-c-c-a-s, I think, is the way. A. What is his first name?

Q. John, I believe. A. Yes, sir; we have the record.

Q. Please state what it is. A. There was $350 paid on the 6th of July.

Q. Anything prior to that time? A. No, sir; nothing prior to that time.

Q. How far back have you looked? A. You said prior to July 6th, and and I looked from July 1st to July 8th.

Q. Look back as far as the 20th of June? A. I do not see anything.

Q. From whom did that money come on the 8th of July? A. From Thomas Adams.

Q. From what place? A. From New York.

Q. Is there anything after the 8th of July? A. Up to what date?

Q. Say two or three days afterwards. A. I do not see anything down to the 16th.

Q. You need not go any further than that; do you remember to whom you paid that money? A. I could not awswer that question. It is paid through the cashier of the office.

Q. How is the money sent by your company? A. That would be sent direct from New York to the Baltimore office.

Q. They send the money itself? A. To the cashier; yes, sir.

Q. (COURT.) You do not mean that?

WITNESS. No, sir; not the money, but the message.

COURT. A message to you directing you to pay $350.

WITNESS. Yes, sir; that is in cipher to the cashier of the office.

COURT. It directs you to pay $350 to John Luccas?

WITNESS. Yes, sir.

MICHAEL W. GANZHORN, produced on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

Q. (Mr. MARBURY.) You are the proprietor of the City Hotel, I believe? A. Yes, sir.

Q. Have you your hotel register for June, 1895? A. Yes, sir.

Q. Look at your register, under date of June 29th, 1895, and see if you have entered there, among your guests, the names of Henry Miller or C. Miller, J. J. Luccas, and John M. Hudson. A. Here is the name of John M. Hudson, of New York, under date of June 29th, 1895. There is no name of Miller here.

Q. (Mr. LEE.) Was that on Saturday? A. Yes, sir.

Q. (Mr. MARBURY.) Look under Monday and see if you have Luccas and Miller there? A. The following Monday?

Q. Yes. A. There is here the name of John M. Hudson, T. S. or T. L. Miller; there are two other gentlemen registered from New

York, Y. Callett and Leo Laly; those are all the people who have registered from New York.

Q. Is this your book (indicating)? A. Yes, sir.

Q. Does this book contain the names of the guests at your hotel on the various dates? A. Yes, sir.

Mr. MARBURY. I can read it, I suppose, as well as he can. On Sunday, June 30th, 1895, there was registered at this hotel, John Luccas, purporting to be from Patterson, N. J., and C. Miller, of New York. Luccas is the name under which Dr. Luis passed, and C. Miller that under which Gen. Roloff passed. On the next day, Monday, we find registered George Mowbray, who was the chief engineer, and John Caruthers, the mate of the vessel, as well as the name of Capt. J. M. Hudson, all registered at the same hotel.

Mr. OWENS. You know, of course, that it is the same Mowbray and Caruthers we are speaking about.

Mr. MARBURY. I have no special gift of knowledge, but if there be any others of that name, you are at perfect liberty to show it.

Cross-examination.

Q. (Mr. OWENS.) You do not know whether or not these names of the gentlemen registered here were signed by themselves, do you? A. No, sir; I do not.

Q. The other column in your book, over which is the heading "Room," shows the room occupied by different people? A. Yes, sir; the room assigned to them.

Q. On Tuesday the name of John M. Hudson is signed again; how would you account for that; when a man comes to your hotel to stay and registers when he comes there, does he register every day while he is there? A. It is the custom in both American and European hotels when a gentleman comes in and registers to pay for his room, that is particularly so in European hotels, and mine is a European house; the gentleman will pay for his room when he comes in. He pays his dollar, or whatever it may be, and that makes his room vacant the next morning. If he wishes to remain another day, he must reregister, and so on for every day. If he does not pay every day in advance, he continues until his week or his time of stay is up, and then settles his bill; but those paying in advance must reregister every day.

Mr. MARBURY. I want to show it to you, gentleman of the jury, that these two parties, C. Miller and John Luccas, apparently had adjoining rooms, or rooms in the neighborhood of one another; Miller had room No. 27, and Lucas had No. 28. On Thursday, Mowbray, the engineer, and Carruthers, the mate, had rooms 17 and 18, which shows that they were travelling together, and Hudson had room No. 19.

Redirect examination.

Q. (Mr. MARBURY.) Are you not mistaken, to some extent, about reregistering; you say that those who pay in advance register every day; do they not sometimes register every other day instead of every day? A. They may pay for two days in advance, and in that way register the following day.

Q. That is the way they appear to have done here. A. I have known some gentlemen to pay as high as three or four days at a time in advance.

Mr. MARBURY. I will call your attention, gentlemen, to the fact that that is exactly the way they did in this case. For instance, on June 29th, appear the names of J. M. Hudson, George Mowbray, and John Carruthers in rooms 19, 17, and 16. Luccas and Miller were not there. Turn to Sunday, and you see Miller and Luccas registered in rooms 27 and 28.

A JUROR. Who was Caruthers?

Mr. MARBURY. Caruthers, according to the testimony, was the mate of the "Woodall."

Q. (Mr. MARBURY.) Are rooms 17, 18 and 19 on the same floor? A. They are not now, I made some changes, and renumbered the house in August, 1895. I do not remember just now whether those rooms were adjoining at that time. At present 18 and 19 are adjoining rooms, but 17 is not.

Q. On what floor is No. 17? A. On the first sleeping floor.

Q. 18 and 19 are on what floor? A. The second sleeping floor.

Q. 27 and 28 are on what floor?

COURT. The question is where they were in July of 1895? A. That I cannot remember just now.

Q. (Mr. MARBURY.) Could you tell whether 27 and 28 were on the same floor? A. I would not like to say positively, because I might make a mistake.

Q. Would they be very far apart? A. I don't know.

Mr. MARBURY. All that I can show is that the rooms were numbered in sequence, 17, 18 and 19. On Sunday, July 30th, you have registered Luccas and Miller occupying rooms 27 and 28. You do not see Hudson, Mowbray and Carruthers registered again on that day. Coming to Monday, July 1st, and you have registered George Mowbray, John Carruthers, and J. M. Hudson in the same rooms, 19, 17 and 18. Coming to July 2d, you find George Mowbray, John Carruthers and J. M. Hudson in rooms 17, 18 and 19.

Counsel for the United United States thereupon exhibited to the jury the hotel register above mentioned, and pointed out thereon the names as above indicated.

And thereupon the United States announced the testimony closed on its behalf.

The defendants offered no testimony on their behalf.

The COURT. Have you no propositions of law to offer?

Mr. MARBURY. We have no special instructions to ask. Your honor will instruct the jury according to your own judgment as to what is the proper view of the law.

Mr. OWENS. We have a number of instructions to ask and have given a copy of them to your honor.

The first prayer we ask is numbered 1-A and is:

The jury are instructed that a military expedition is a journey or voyage by a company or body of persons having the position or character of soldiers, for a specific warlike purpose; and that a military enterprise is a martial undertaking involving the idea of a bold, arduous, and hazardous attempt.

That is the language used by Chief Justice Fuller in the Wiborg case.

The next is numbered 2-A, and is:

The defendant prays the court to instruct the jury that if they find from the evidence that the defendant furnished the means to purchase and provision the steamer "James Woodall" for the purpose of carrying arms to Cuba, for the use of the insurgents, and at the same time and on the same trip to carry persons to Cuba to enlist in the cause of the insurgents, they must acquit the defendant unless they further find the defendant knew that at the time he furnished said means the said men to be carried as aforesaid were an organized body of men officered and equipped, or a body of men capable of and having the intent to become officered and equipped for the purpose of doing or performing some act of war against the Kingdom of Spain, in the said island of Cuba.

The next is prayer numbered 1:

It is no offense against the laws of the United States for individuals to leave the country with intent to enlist in foreign military service, and such persons may lawfully go abroad for this purpose in any way they see fit, either as passengers by a regular line steamer or by any steamer bound for the desired destination, by chartering a steamer or in any manner they choose, either separately or in association, for the purpose of facilitating transportation, provided they do not form or set on foot any military expedition or enterprise or procure or prepare the means therefor.

The next is No. 2:

It is no offense, under the neutrality laws, to provide and prepare the means for the transportation of persons intending to enlist in foreign service out of this country, and cause them to be landed in such foreign country, provided they go merely as individuals, and not as a military expedition.

The next is No. 3:

It is no offense against the laws of the United States to procure the transportation from this to a foreign country, of arms, ammuni-

tion and material of war, either alone or together in the same ship, with men who intend to enlist, provided they are not a part of or in aid of any military expedition or enterprise set on foot in this country. In such case, the persons transported and the shipper and transporter only run the risk of capture, and the seizure of such arms and ammunition by the foreign power against which the arms are intended to be used.

The next is No. 4:

Mystery and secrecy in the preparation and conduct of the voyage are not conclusive of the illegality of the enterprise under our neutrality laws, but are consistent with legality as illegality; as these precautions may only be used to avoid attack and capture by the foreign power against which the arms are intended to be used.

The next is numbered 5:

The fact that men intending to enlist, and arms and ammunition designed to be used against a foreign power, are carried in the same ship, and landed in such foreign country, and that the men there handle and carry the arms and ammunition, is not of itself absolutely conclusive of a military expedition; it being possible that the men may intend to act merely as individuals, and simply as porters of these arms. In such case, the existence of a military expedition is one of fact for the jury.

The next is numbered 6:

If the jury find that the men taken on board the "Woodall," off Harbor Key, were not designing to act together as a combination of men, but were acting individually, simply as porters of arms, without any combination or without any intent to defend themselves at all if anybody should attack them, it would be authorized to find that they did not constitute a military expedition within the statute, from these facts, and if they do so find they must acquit.

The next is numbered 7:

If the jury find that any witness has deliberately told a falsehood, deliberately misstated a masterial circumstance, then the jury is entitled to disregard that witness's testimony altogether, unless it finds it corroborated by facts and circumstances to satisfy the jury of the correctness of the said testimony.

The next is numbered $7\frac{1}{2}$:

In order to convict, the jury must find that the defendant conspired to provide or prepare the means for a military expedition or enterprise begun or set on foot in the United States to be carried on from the United States against a friendly power.

The next is number 8:

The defendant cannot be convicted under the indictment in this case for any new and independent act performed on the "Woodall" after the vessel has reached the high seas beyond the three-mile limit from the shores of the United States, or for any independent act that was not performed within the district of Maryland, pro-

vided such acts were neither designed nor expected, nor contemplated by the conspiracy or combination to which the jury shall find the defendant was a party. He is responsible for the acts done on the "Woodall" in pursuance of and in fulfillment of the previous plans and expectations of the conspiracy or combination only.

The next is number 9:

If the jury find that without previous combination, agreement, and intention, the men taken on board the "Woodall" after embarkation off Harbor Key, organized themselves into a military body and supplied themselves with arms from the cargo on the schooners, without right and contrary to the previous intention or expectation or arrangement, of the defendant, or if military organization had previously been effected on Pine Key or Harbor Key, or thereabout, without the knowledge or expectation of the defendant, then you must acquit.

The next is number 10:

Before the jury can find the defendant guilty it must be satisfied, beyond a reasonable doubt, that the defendant had knowledge, before the "Woodall" left the district of Maryland, that the expedition was to be a military and illegal one if, on the contrary, the jury believe that the defendant had no such knowledge, but contemplated only a lawful shipment of arms and ammunition and passengers who individually intended to enlist only upon their arrival on Cuban soil—it must acquit.

The next is No. 11:

It is the duty of the Government to prove to the jury beyond a reasonable doubt that the conspiracy charged in the indictment or the acts charged as committed to effect the object of it, or of them, were committed by the defendant within the district of Maryland, and if the proof fails in this respect, the defendant must be acquitted.

The next is No. 12:

If the jury find that the facts proved which are relied on to show guilt are as compatible with the theory of innocence or of an innocent undertaking, it is the duty of the jury to find the defendant not guilty, and if the jury finds that the facts proved are compatible with an innocent undertaking, they would make a situation of doubt, and of reasonable doubt, the benefit of which must be given to the defendant.

The next is No. 13:

Merely landing men and arms and ammunition in Cuba, contrary to and in disregard of the laws of Spain, would not be an offense against the laws of the United States, and for the bringing about of such acts the defendant could not be convicted, under the indictment of this case, unless there existed a military expedition or enterprise contemplated and foreseen by the defendant before the "Woodall" left the District of Maryland.

The next is number 14:

As to so much of the evidence as is circumstantial, it is not a ground of conviction, except in as far as it points toward guilt and is inconsistent with innocence.

The next is number 15:

The defendant is entitled to the benefit of all reasonable doubt that may arise on the evidence or the circumstances of the case; and if such doubt exists upon the whole evidence the defendant must be acquitted and the verdict of the jury must be not guilty.

The COURT. The gravamen of this charge of conspiracy is the committing of the act in Maryland. The effect and object of the conspiracy is the agreement to fit out a vessel for this unlawful purpose, and the act charged is the furnishing of the means for a military expedition by procuring the "Woodall" or provisioning her. I suppose that if either of those acts was done here by the defendant or by his procurement, he would be guilty.

Mr. MARBURY. Of course, I want your honor to make it clear to the jury that it is not necessary to show that any specific overt act was committed by Dr. Luis within the District of Maryland, in order to sustain this indictment. I understand the law to be that if you prove the conspiracy, although that conspiracy may have been entered into outside of the District of Maryland, and if you prove that overt act in pursuance of that conspiracy within the District of Maryland by any one of the conspirators, it constitutes a renewal of the conspiracy. If there is any question about that I would like to be heard upon it.

The COURT. I do not think it is necessary for the court to pass upon that question in this case, because, if the witness relied upon by the Government to prove the conspiracy is believed by the jury, then Dr. Luis was here in Maryland and they consulted together, and the directions were given for fitting out the vessel and furnishing the money in Maryland; so the case seems to be free of that question.

Mr. MARBURY. I also want to make the point that it was not necessary to show that he actually conducted the negotiations for the vessel or for the procuring of provisions for the vessel.

Mr. JOHNSON. We do not desire to have any misapprehension in the minds of the jury as to what the offense here charged is. The offense here is the combination or conspiracy within the district of Maryland to furnish means for a military expedition from the United States to Cuba. The first part would constitute no crime against the laws of the United States at all, unless the last part is connected with it, and the last part will not affect this traverser unless he is connected with it by knowledge. If he sent Roloff down to Harbor Key to do these things, of course he is responsible for them as much as Roloff would be; but I want the jury to understand clearly that two things are necessary to constitute this offense, first,

the combination here, and secondly, furnishing the means to carry on an expedition from the United States.

The COURT. The combination must be a combination to commit an unlawful act, and the unlawful act is the setting on foot the transportation or providing the means to transport and set on foot a military expedition from the United States to Cuba.

Mr. JOHNSON. It would not have been a debatable question if this vessel at gone to San Domingo and taken on a body of organized troops there. That would not have been against the laws of the United States. The offense consists in the preparation here of an expedition to take place from the territory of the United States. If it is from any other place than the territory of the United States, it is no offense under our law.

Mr. OWENS. And it is particularly necessary that the defendant, the traverser here, knew of it.

Mr. MARBURY. Of course, that is understood.

The COURT. Of course, he could not conspire to do an act without he knew what the act was which the conspiracy had in view. But if a conspiracy was entered upon to do an unlawful act, he is responsible for whatever is done in pursuance of that agreement.

Mr. MARBURY. Nearly all of these instructions strike me as being sound propositions of law, but one or two of them contain errors which I would like to point out to the court.

The first one asks the court to instruct the jury that a military expedition is a journey or voyage by a company or body of persons having the position or character of soldiers for a specific warlike purpose, and that a military enterprise is a martial undertaking involving the idea of a bold, arduous and hazardous attempt——

Whether such language as that may or may not have been by the courts in discussing this question——

Mr. OWENS. That is exactly the language of Chief Justice Fuller in the Wiborg case.

The COURT. It is a dictionary definition.

Mr. MARBURY. I was about to argue that a military expedition against the island of Cuba did not necessarily involve such an amount of risk and hazard.

The COURT. It involves the risk to such an extent that if they were pursued they were liable to go to the bottom. They were in a vessel laden down to the water's edge, and if they were pursued by a Spanish cruiser I should say that they were engaged in the bold, arduous and hazardous attempt.

Mr. MARBURY. Prayer No. 2 contains a serious objection. It reads:

"The defendant prays the court te instruct the jury that if they find from the evidence that the defendant furnished the means to purchase and provision the steamer 'James Woodall' for the purpose of carrying arms to Cuba, for the use of the insurgents,"——

I submit, may it please the court, that there is no evidence in this case, if the evidence is true—and there is nothing to the contrary—that the only arms which this vessel was carrying were not to be used for the use of the people themselves on board the vessel. The testimony is uncontradicted, that the arms taken aboard at Harbor Key were for the use of the very men who were taken on board with the arms; that is to say, they were distributed among the men after they got on board.

Mr. OWENS. No, sir; that is not the evidence. They were piled up there in the boat.

Mr. MARBURY. It is true there may have been some more arms than these 150 men wanted. I believe there were five or six hundred rifles, but this instruction ignores the undisputed fact that these arms, or a large portion of them, were not to be given to people in Cuba, but were arms constituting the armament, so to speak, of the body of men who were going to Cuba on this vessel.

Mr. OWENS. Not at all. They took the mall and put them in the hold, and when they were in the hold they staid there until they got to Cuba. We simply submit to the jury the question.

Mr. MARBURY. There is no dispute about the fact that they distributed the arms among the men.

Mr. OWENS. There is a dispute about it.

Mr. MARBURY. You cannot dispute it under the evidence. There is no evidence in this case except evidence to the effect that these arms were distributed among these soldiers themselves, and were used as their arms. They were not being carried as freight or merchandise or anything of that sort. The proposition contained in this prayer is that there is evidence from which the jury might find that these arms were being transported as mere merchandise to be sold or delivered to other people.

Prayer No. 1 involves a proposition of law which is perfectly good in the abstract:

"It is no offense against the laws of the United States for individuals to leave the country with intent to enlist in foreign military service, and such persons may lawfully go abroad for this purpose in any way they see fit, either as passengers by a regular line steamer or by any steamer bound for the desired destination, by chartering a steamer, or in any manner they choose, either separately or in association, for the purpose of facilitating transportation, provided they do not form or set on foot any military expedition or enterprise, or procure or prepare the means therefor."

It seems to me that nearly all the prayers are perfectly good law, but most of them seem to have no relation to the actual evidence in this case. We will ask your honor to exercise your discretion as to the propriety of granting them, for that reason.

For instance, prayer No. 4 says:

"Mystery and secrecy in the preparation and conduct of the

voyage are not conclusive of the illegality of the enterprise under our neutrality laws, but are consistent with legality as illegality; as these precautions may only be used to avoid attack and capture by the foreign power against which the arms are intended to be used."

Of course, nobody disputes that.

I want to call your honor's attention to a defect in prayer numbered 6, which reads:

"If the jury find that the men taken on board the 'Woodall' off Harbor Key were not designing to act together as a combination of men—were acting individually, simply as porters of arms, without any combination, or without any attempt to defend themselves if anybody should attack them—it would be authorized to find that they did not constitute a military expedition within the statute from these facts; and if they do so find, they must acquit."

I believe, however, that your honor has already corrected that instruction, when it was presented.

Prayer No. 7 involves a proposition which I have often found to be advanced in a criminal court, but which has always struck me as being an instruction that ought not to be in the form of a special instruction.

"If the jury find that any witness has deliberately told a falsehood—deliberately misstated a material circumstance—then the jury is entitled to disregard that witness's testimony altogether, unless it finds it corroborated by facts and circumstances to satisfy the jury of the correctness of said testimony."

The jury is entitled to disregard the testimony of any witness at any time. That is the right which the jury have at all times. They are the only ones who are entitled to pass upon the question as to the credibility of witnesses.

The COURT. They are entitled to disregard it, if they regard it as untrue.

Mr. MARBURY. They are entitled to disregard it if they believe it to be untrue.

Mr. OWENS. We want the jury to understand what their rights are.

Mr. MARBURY. The jury know what their rights are and they do not need any assistance from you in that regard.

Prayer numbered 7½ is:

"In order to convict, the jury must find that the defendant conspired to provide or prepare the means for a military expedition or enterprise, begun or set on foot in the United States to be carried on from the United States against a friendly power."

It appears from the testimony in this case that this expedition was from one of the Florida Keys. The jury must find that the defendant provided and prepared the meany for a military expedition or enterprise begun and set on foot in the territory of the United States to be carried on from the United States against a

friendly power. Of course your honor will no doubt cover the necessary points involved in that prayer by the general instructions to the jury.

The COURT. If the enterprise contemplated was a military expedition from Florida, or any part of the coast of Florida, or from any of the keys or reefs that make out from Florida, it is a part of the territory of the United States.

Mr. MARBURY. All that I desire is to have your honor call the attention of the jury to that fact in connection with this prayer. Any map of Florida will show that.

Mr. JOHNSON. Not one.

Mr. OWENS. There is not a map of Florida that will show Harbor Key.

Mr. MARBURY. That is exactly why I want the court to deal with this question, so as not to give you gentlemen an opportunity to talk afterwards.

COURT. I understood that prayer, as I read it, to be the basis for an argument that might be made, perhaps, that the expedition or the means providing for the carrying on some sort of an enterprise from Yucatan or Progresso——

Mr. MARBURY. Well, a point not within the territory of the United States.

COURT. Not within the territory of the United States.

Mr. MARBURY. That is just what I want to get at may it please the court; I do not propose that counsel shall make any such an argument as that in this case when there is no such question about it. The evidence, and the only evidence is that it was to start from one of the Florida Keys, and Key West is out in the ocean there, and there are lots of little islands running from Key West up to the main land of Florida; that is the thing in this case; that is the testimony in this case.

COURT. The intention was that if it should start from any of the points in Florida, that it would come under the United States law, and the jury shall understand that.

Mr. MARBURY. There is no evidence in the case that it started from any other point. I propose to try to eliminate the subjects which are not proper subjects of controversy in this case.

Mr. OWENS. My brother is mistaken; this case is all controversy.

Mr. MARBURY. Counsel is mistaken very much; when I say they admit things, I mean they have offered no evidence to controvert it, and I assume the jury is going to give a verdict on the evidence and not upon what the counsel chooses to say.

Mr. OWENS. Or the lack of evidence.

Mr. MARBURY. Now, that prayer is entirely wrong, if your honor please.

COURT. Which prayer is that?

Mr. MARBURY. Prayer No. 7½; he is charged in this indictment

with setting on foot and preparing the means for an enterprise, a military enterprise, to be conducted from the United States against a foreign power. He has not been tried on that charge. Your honor required us to elect, and we elected to try him on the conspiracy charge, on the indictment for a conspiracy. That instruction might be all right if he were being tried under that first indictment, but it is not a proper instruction in this case at all; it is entirely misleading and entirely erroneous; it seems to me that prayer No. 7½, for that reason——

COURT. It should be altered then to "conspired."

Mr. OWENS. Oh, yes; we are perfectly willing for any alteration that your honor sees fit to make.

Mr. MARBURY. The nexth, the 9th and 10th prayers, seem to me to be all right, and prayer No. 11, your honor has already commented upon as requiring qualification; that, I believe, has been made. And prayer No. 12, I noted one error in that and only one. Prayer No. 12:

"If the jury find that the facts proved which are relied on to show guilt are as compatible with the theory of innocence, or of an innocent undertaking, it is the duty of the jury to find the defendant not guilty, and if the jury find that the facts proved are compatible with an innocent undertaking, they would make a situation of doubt, and of reasonable doubt, the benefit of which must be given to the defendant."

Now, if your honor will leave it to them to find that they are compatible, that is another proposition, but these words here, of the very fact that the circumstances are compatible with an innocent undertaking, making it a situation of doubt, is certainly not a proper way to put this case to the jury. We do not think that they are compatible; that is the whole question at issue, whether they are compatible.

COURT. They can be altered "if the jury find that the circumstances and facts are compatible."

Mr. MARBURY. "If they are compatible" that is all right, but do not let us tell the jury that they must. That is all we desire to say. I think most of them are perfectly sound.

COURT. The propositions of law submitted on behalf of the defendant, by his counsel, all of them express propositions which are abstractly correct. Some of them are open to the objection that it is difficult to find the evidence upon which to base them, but as the whole case must be submitted to the jury, and all the evidence for their consideration, I shall trust to their understanding of the testimony, and shall grant these prayers as they stand, rather than undertake to point out the particular portions of them which I think are doubtful, because of the lack of evidence to support them. They are abstractly correct, and I shall leave it to the good sense of the jury to apply them to the testimony in connection with the instructions which I shall give them.

And gentlemen of the jury, I grant these instructions which are asked on behalf of the defendant in connection with the instructions which I now shall give you: First, with regard to the crime of conspiracy; that is the basis of the charge in this case, and the first element in this indictment upon which this defendant is on trial to be found by you is the existence of the conspiracy charged.

The crime of conspiracy is the agreement of two or more persons to do an unlawful act, and when the agreement to do the unlawful act is proved and the doing of some act charged as having been done to carry the unlawful agreement into effect is proved, then the crime of conspiracy is established.

The assent of the minds of those charged with conspiracy may be proved by direct testimony or it may be inferred from any facts which establish to the satisfaction of the jury that two or more of the parties charged entered into the agreement to do the unlawful act. It is not necessary that there should be proved a formal agreement, but an agreement may be inferred by the jury from facts proved which show that the parties charged, or some two of them, were acting together with a common intent to effect the same unlawful purpose. If such a conspiracy is proved, then such person in it is liable for whatever is done by any of the others in carrying out the unlawful purpose.

In the case you are trying, the unlawful act which it is alleged the conspiracy was formed to commit is declared to be unlawful by Sec. 5286 of the U. S. Revised Statutes, which prohibits any person in the United States from providing or preparing the means by which any military expedition or enterprise is to be carried on from the United States against any foreign power with whom the United States are at peace.

The first and second counts of the indictment charge that the defendants named, of whom the defendant on trial is one, conspired to provide the means for such a forbidden military expedition, and to effect that object provided the steamer "James Woodall" in the port of Baltimore for the purpose of transporting such a military expedition or enterprise from the United States to Cuba.

The third and fourth counts charge that the same defendants conspired to commit the same unlawful act, and to effect it purchased provisions to be used on the steamer "James Woodall" for the purpose of transporting a military expedition consisting of a body of armed men from the United States to Cuba, which as the defendants know had been previously organized within the United States for the purpose of making war against the island of Cuba.

It is not necessary that you should find that all the parties charged were in the alleged conspiracy; it is sufficient if you find that Luis, the one on trial, together with any other one of the persons charged, was in the agreement. There must be two, at least, in a conspiracy, and in this case Luis and any one of the other

defendants would be sufficient. In this case it would be sufficient if you found that Roloff and Luis agreed together to provide and fit out the steamer to carry a military expedition against Cuba, as charged, and that they did the act charged to effect the unlawful purpose, they had agreed to attempt.

At to the fact of an agreement between Luis and Roloff to fit out the "Woodall" for some secret enterprise very different from any of the ordinary uses of such a steamer, if you believe the testimony of Capt. Hudson, you have very direct testimony, as he testifies that at the hotel in this city, where he says they were known by assumed names, the whole plan was discussed by them in the evening of each day when he reported what he had done under his orders from them, and received orders what next to do in fitting out the steamer, and the money to do it with, and where, as he testifies, in the presence of each other, they unfolded the whole plan of taking a body of men to Florida and landing them in Cuba to take part in the insurrection there.

Capt. Hudson himself had knowledge, as he admits, of the character of the enterprise. He was, therefore, a co-conspirator, and his evidence is to be received with caution and should not be received by you as conclusive, unless supported by such corroborative facts and circumstances as lead you to believe that it is true. He is a competent witness, but it is proper that you should weigh his testimony and scrutinize it with care; but if you find that it is corroborated where, if it were true, you would naturally expect to find corroboration, and that it is supported by other testimony, and is itself consistent and probable, and is so confirmed in material matters that you are satisfied that he has testified truly, then you are bound to credit his testimony, no matter what you may think of his motives in giving it; or you may accept so much of his testimony as you believe to be true and corroborated and may reject the rest. And so with regard to other witnesses who have been called by the United States, their character, their bias and their motives in testifying, should be considered by you in determining the credit you will give to their sworn statements; but if, on the whole, you are fully satisfied that they have told the truth, you should not reject their testimony solely because you do not approve their conduct.

If you are satisfied that Luis and any other one or more of the defendants did agree together to provide the means to carry a body of men from the coast of Florida to Cuba, then you must consider whether they agreed together to provide the means for what was a military expedition against the Spanish Government in Cuba.

To constitute a military expedition within the meaning of this law, it is not necessary that the men comprising it should wear uniforms or have the organization usual in a regular way.

If you find that the enterprise in this case was of a military char-

acter—that is to say, it was not for any peaceful purpose, but was for a military service with hostile intention against the Spanish rule in Cuba, and if the men had a concert of action among themselves by which they combined into a body which submitted to such command and authority as was necessary to enable them to embark in Florida as a body and to land as a body in Cuba, and that they had with them the arms and ammunition of a military body, that they came as a body from an out-of-the-way place on the coast of Florida bringing nothing but their arms and ammunition, that the arms and ammunition were not undivided property, but appeared to belong to a common stock, that they were fitted out with shoes from a common supply sent out for their use from Baltimore, that they were controlled and directed in their embarking and disembarking by men to whom they gave military title, and that they said they were going to Cuba to fight the Spaniards—these are facts which if found by you are sufficient to warrant you in finding the expedition was in fact a military expedition from the United States against Cuba.

The law does not make it an offense to transport individuals who go without any combination together to a foreign country, there to enlist in any military service; nor is it an offense to transport arms as merchandise to any foreign country where there is a war or insurrection, but it is an offense to provide the means for transporting a body of men who have combined and organized together in the United States to go with arms in their hands to Cuba, there to make war against the recognized government; and this is so, although it may not be intended that the expedition on reaching Cuba shall act as an independent military body, but is intended to join some part of the insurgent army there.

The testimony in this case is not at all complicated, and you have listened to it attentively, and I shall not comment upon it. I will only say to you that this Statute of the United States is one which it is your duty honestly to enforce, just as you would enforce any other law which you may be sworn to try a case under.

That nations at peace with the United States shall not permit military expeditions to be set on foot from their shores against our country is a rule of neutrality which the United States has strenuously insisted upon, and it is a matter of national honor that we ourselves shall honestly enforce our own laws, forbidding the same offence from our shores against other nations.

In examining the jurors in this case, I did not hold those to be disqualified who admitted that they sympathized with the Cuban insurrection, but who said that they could decide this case clearly upon the testimony, and I feel confident that you will do so. The only way that any criminal law can be enforced, or any offense punished under our Government is by the verdict of a jury; and it is upon the honest desire of every juryman to fulfill the obligation

of his oath that the enforcement of the law depends. The duty of a juror, therefore, is a very high and important function of citizenship of this free country. You will therefore take the law as given you by the court, and fairly consider the evidence, remembering that the defendant now on trial in this, as in every criminal case, is presumed to be innocent, and that presumption protects him from conviction until you are satisfied beyond a reasonable doubt from the evidence that he has committed the offense charged against him.

I grant the propositions submitted by the defendant with one or two slight corrections which I suggested.

Mr. OWENS. We make no exception; if your honor marks them; of course we are perfectly satisfied with the correction.

COURT. Is this the copy that is to be given to the jury?

Mr. OWENS. Yes, sir.

Mr. LEE. Here is another copy.

COURT. Will you go the jury now, gentlemen?

Mr. REED. Yes, sir; we are ready.

ARGUMENTS BEFORE THE JURY.

Mr. LEE. If your honor please, and gentlemen of the jury: We cannot force upon you, gentlemen of the jury, it seems to us, too earnestly the importance of the verdict that is to be rendered by you in this case. We will state to you that we stand here, not as persecutors, but as prosecutors. We stand here in the interest of the law-abiding, the honest and respectable citizens of the United States in the District of Maryland, as arrayed against the lawless, reckless and agitating members of this community. We do not come here with any grudge or spite against this traverser. We come here just as we would if he was accused of murder; we would be sorry for him. But we are bound to enforce the statutes of the United States. But here is a statute on the statute books, and he stands here charged with violating it.

Now, that is our duty. Whether or no you gentlemen agree with that statute; whether or no it is a wise statute; whether or no it is a statute that you think ought to be on the statute books of the United States, that is not your concern, and it is not our concern. We are here to enforce the laws, and it is your sworn duty to find a verdict according to the evidence presented here, whether or not this traverser has violated these sections.

Now, as we stated to you in the opening statement in this case, we told you that Joseph J. Luis stood charged in this court under Section 5440 of the Revised Statutes of the United States, as amended by the Act of May 17, 1879, which makes it a crime for two or more citizens or two or more persons to conspire together to violate a statute of the United States, and the statute in this case which is charged as having been violated is No. 5286, which makes it a

crime to set on foot or prepare the means for a military expedition against a friendly power—a power friendly to the United States.

Now, we will look at the evidence presented here for a few minutes. It seems to me that it is not necessary to dwell on that. You, gentlemen, if you have ever served on juries before, have had evidence presented to you on one side, and on the other side; you have had contradictory evidence presented, and it has been always with the jury a struggle whether or not to believe the witnesses produced on behalf of the defense, but here, gentlemen of the jury, you have the undisputed testimony of the Government, you have the witnesses that we have produced here, and they have not so far put Dr. Luis himself on the stand——

Mr. BENOIT. Stop; I shall take an exception to that.

COURT. You must not comment upon that, Mr. Lee, and the jury must not consider that comment.

Mr. LEE. Well, sir, we stand here with our evidence before you undisputed. We have that; we put on the stand, first, Mr. Holmes, of New York, who testified as to the buying of the "Woodall;" it seems that he was the agent in New York City for Woodall & Company, and made the negotiations for the sale of this steamer, and did negotiate the sale of it, and in pursuance of that Hudson came to Baltimore with one Tinsley and bought the "Woodall." Hudson testified that he was present at meetings in New York between Smith and Dr. Luis, and witnessed there the agreement or intention to fit out this steamer, and to fit her up and send her with an armed expedition to Cuba; we have that.

Now, the other side endeavored to cast suspicion on the evidence, or the testimony given by Hudson, Captain Hudson. How, who is Captain Hudson? Captain Hudson testified here that he had been a friend to these gentlemen since 1886; that he had known General Roloff for 17 years; he had been their true, tried and trusted friend. He had taken expeditions to Cuba; he says he was in command of the "Hornet" and he had been in command of the "Morning Star," and had known these gentlemen in that connection; he was their friend; he says that he could take expeditions to Cuba, when others failed.

And gentlemen of the jury, it was not Hudson who went to the authorities and told of this expedition first; it was not until this expedition was known to the public, and that the people had read in the newspapers of it, and that he was known in it, that Hudson goes to the Spanish consul, and to save himself, after the thing was out, to save himself he goes and tells what he knows about it. Now, it seems to us that he has given his testimony in a perfectly plain and truthful way; he told what he knew about it; he told the whole thing; he told how they had meetings in New York, how they came to Baltimore, and had meetings at the City Hotel, and how that he had purchased the steamer and fitted her up and re-

ported every night to Gen. Roloff and Dr. Luis at the City Hotel of the progress of the affair. Now, the court has told you that you must look for corroboration of the evidence given here by Hudson. Now, haven't you sufficient corroboration? What else do you want? Haven't you the telegrams; haven't you the evidence of the crew of the steamer that went along with the steamer? These men didn't know anything about it. Hudson was the only man that knew of the expedition. Lawrence and Cronin and Eareckson and Lockney were the crew, and they only knew of the expedition when it was taken on board at Harbor Key on the 18th or 19th of July, 1895. You have that corroboration; you have the corroboration of the books produced here, the register of the City Hotel, which shows that on these days intervening between the first day of July and the 9th day of July, when the steamer left Baltimore, these men were registered. They were registered together up there; the mate, Carruthers, was there, Mowbray was there, Miller, or Roloff under the name of Miller, and Dr. Luis and Hudson were all there; that is all corroboration. We put these witnesses on the stand to corroboration what was told you by Hudson.

Then you have the corroboration of Mr. Bloxham of the Western Union Telegraph Company; he tells you that money was sent and was paid to John Luccas on the 8th day of July, 1895; that all goes to corroborate what was said by Capt. Hudson.

Now, it seems to us that there is no doubt about the fact that this was a military organization; it was an expedition. As the court has told you, these men got on board the "Woodall," they came with their arms; the evidence is that they came, each man with a flag, a pistol and a machete, and some had rifles and some had not, and that in addition to that they brought on about 500 rifles and some 200,000 cartridges; that this ammunition and these arms belonged to the whole crowd; they already were an organized body that moved together, and as soon as they got on board the "Woodall," Carlos Roloff, who had gone on board as a passenger, takes command and keeps command, and lands the men at Cuba on the 24th day of July, 1895.

Now, after they left Cuba; after the "Woodall" left Cuba, and the men on shore there, what did they do? They came to Progresso, and there Hudson sends a telegram to Smith in New York, which was worded by Roloff and which reads that they have disembarked safely and landed, and that everything was all right, and then they go on to New Orleans, and there they meet Dr. Luis and he pays over to them the money, or pays over to Hudson the money to pay the crew of the "Woodall;" and more than that, he gives the money, $50 apiece, to be given to each man as hush money or as compensation for the extra risk, as they put it, which the men had incurred in going on this expedition.

Mr. OWENS. There is no testimony of that.

Mr. LEE. Now, that is the case; it seems to us that there are two points: the military organization, the military expedition, the fact that it was an expedition, and then the connection of this traverser with it; we have proven to you that he was connected with it in New York; he paid the money over to Smith, who gave it to Hudson to go directly to Baltimore and buy the "Woodall," sixteen $1,000 bills; and then we connect him with it at Progresso, and we connect him with it at New Orleans, and we connect him with it most positively at Baltimore here, when he was registered at the City Hotel.

Now, that is the case; there is no contradicting evidence. It is not a case of comparing the evidence of the plaintiff and the evidence of the defendant; it is simply the evidence that the State or the Government produces here which you are to consider.

Now, it seems to us that this matter of these filibustering expeditions is a very important thing to this Government. It is a thing that has absorbed the attention of this country since the very earliest times. It is a matter that has been the subject of proclamation and of messages of the President from the time of George Washington down to Grover Cleveland. It seemed to me in looking over the books, that there has been no subject, no question of international importance, that has absorbed so much of the time and the attention of the Presidents and the Secretaries of State as this very matter. These men, as you know—the character of these men, look at that; take the character of Roloff, of whom the evidence here is that he was a Russian Pole. Hudson says he was an agitator; that he was, I think he said, a chemist, familiar with explosives and all those sorts of things—it seems to me a dangerous man. Dr. Luis seems to have been a Cuban, but Hudson and Smith were in this thing for what they could get out of it; they were in it for the money that was in it. Smith, as you know, got a fee of $2,000 for buying this steamer; he reported to Luis that the steamer sold for $15,000 and he bought it for $13,000. Now, that is the character of these men. It would present a different case, if you had a romantic story here, a crowd of men going off and fighting for Cuba, just for the love of their country, and for the sake of their homes; that, it seems to us, would present a different case; but you have here simply agitators, lawless people, and people who, if allowed to go on in this way, are going to bring trouble upon this country; and we can show you that, and show you the foresight which many of our Presidents have spoken on this very subject.

Now, we have shown you by the maps here, and I don't think it is necessary to go into it again, exactly where this expedition landed, and there has been no dispute about it. It seems to have been in the province of Santa Clara, a few miles from Trinidad, and the evidence tends to show that, and so far as the expedition

going from the United States, the court has instructed you that any part of it, or a part of the Keys, they are in the jurisdiction of the United States, that is a part of Florida, and that question is certainly eliminated from this case.

Now, as to the importance of these statutes, I would like to read you a few words from Washington's farewell address. I happened to come across it, and it seems to me to bear so directly on this very question of the importance of this Government keeping aloof or keeping apart and separate from the political controversies between the European nations and their colonies and between European nations themselves. Now, Washington says in his farewell address, that—

"The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop. . . . Why forego the advantages of so peculiar a situation; why quit our own, to stand upon foreign ground; why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor or caprice."

Now, that was delivered in 1792, and we have a series of such messages; we have a message by President Tyler; we have messages by Fillmore, Pierce, Buchanan, President Johnson, Grant, and we have the last proclamation by President Cleveland, in regard to this very matter, this very case of Cuba. It seems that the policy of this country has always been one of *Laissez faire*; let us alone attend to our own affairs, and do not let us become involved or entangled with the foreign powers, or with their relations in regard to their colonies.

President Monroe, who was so zealous in regard to the policy of this country, that it should interfere when foreign countries endeavored to extend their jurisdiction on this continent, but yet he held most positively that we should not interfere with the relations or in the revolutions of one country, or a colony against a mother country in Europe, and he held to it; he held to it.

Let us alone. If allowed to go in this way; there is no telling what the end will be. As you gentlemen know, insurgents in Cuba are not recognized. If they were recognized as beligerents, it would be a different matter. International Law has no place for insurgents, for insurrection, and until this country sees fit to recognize the insurgents as beligerents, then we have got to enforce these statutes and protect our commerce and our laws. It seems to us that the close proximity of this country to Cuba just puts it in the position of being a means for these agitators, and these expeditions, which, if allowed to go, must result in war, and the entangle-

ment of this country with other countries; it cannot be helped; it is the only result, and it can be the only result.

Now, under the instructions of the court, it seems to us the court has made the case very plain to you. The court has so instructed you, that it is very easy to get at what are the elements, what are the principal points in the case.

Now, first, in regard to this conspiracy, what a conspiracy is, the court has told you; the court has told you that there must be two men in it, two men concerned, that it must be an agreement; it need not be an agreement in writing, it is simply an agreement between two or more men, to violate a statute. There must be some act in pursuance of it. Now, you surely have the agreement here, you do not have it in writing; it is not necessary to have it in writing. You have simply the agreement, any kind of an agreement; an agreement in New York, followed up by meetings in Baltimore, and that constitutes the conspiracy, and following that up, you have the expedition fitted out contrary to Section 5286, as we have mentioned. Now the fact that these men went to Cuba as an armed body; that they went there under some sort of military discipline; that certainly was in the case, and it certainly is evidence to show that on board the "Woodall" from the 9th day of July until the 24th day of July, or from the 16th day of July, when they went on board, until the 24th day of July, when they landed; that they had organization; that there was an officer in charge night and day. There were three buglers on board, and there was every evidence offered to show or to prove to you that it was a body of armed men under discipline, and that they were not there as passengers, as has been said here; they were not men going on a picnic; they were going to fight against Spain in the Spanish dominion of Cuba.

Now, there is one other matter that we would like to call your attention to, and that is the matter of sympathy.

Whatever may be the sympathies of the jury, this is not a matter in which you can consider them. It is simply a matter for you, whether or not you have evidence before you which will convince you that this statute has been violated, and if this statute has been violated, and this defendant is guilty of that violation, you are bound to find for the Government.

I believe that is all I have to say, gentlemen.

COURT. I usually give the jury recess at quarter to one, but if you prefer to take it before beginning your argument, we will take it now.

Mr. OWENS. That would suit me better, your honor.

COURT. Then we will give the jury a recess until quarter past one.

AFTER RECESS.

Mr. OWENS. May it please your honor, and gentlemen of the jury: In the outset of this case, I think it proper to say that crimes are divided into two classes—those crimes which are bad in themselves, which shock the conscience of everybody, and those crimes that are not bad in themselves, but which are simply crime because the law says they shall not be done.

Now, gentlemen, in considering this question, I will call your attention in the outset to this fact: that when you come to consider the case before you you have not to consider the question of a man who is charged with a thing that would shock the conscience of mankind, not the case of a man who has done something wrong because he has a wicked heart that makes him do something that is wrong, but the case of a man who, if he has done anything at all, has simply tried to help his fellow countrymen to succeed in securing that which we enjoy in this country to-day, absolute and entire freedom.

And therefore, in considering the acts of the man who is accused of this crime to-day, you must not, gentlemen of the jury, look upon his individual act as the act of a criminal—not as the act of a man who would try to throw the officer of the law off his track because during his lifetime he was in the habit of so doing, but you must look at every act of his, gentlemen of the jury, as the act of an honest man, the act of a man whose course you would undoubtedly approve were it not for the fact that the written law of the United States might say that it is the policy of this nation that he should not do it.

Now, gentlemen of the jury, the United States district attorney, in the opening of his argument here, asked this question: Who is Captain Hudson? It is that question, gentlemen, that I propose to answer before I go into the question of the discussion of this testimony.

Who is Captain Hudson? Where do we first find him?

We find him, gentlemen of the jury, in Smith's workshop—doing what? Making an agreement with Mr. Smith to rob Dr. Luis of $2,000! That is his testimony.

Now, gentlemen, had Dr. Luis ever known of any such transaction as this in the first place, in all probability Captain Hudson would have had an opportunity, instead of being the chief star of the prosecution's witnesses here, to have been the chief defendant in a proceeding of another kind, in order to establish, if he could, the fact that he was not guilty of a criminal offense.

Where do we next find him? We next find him down here at Woodall's shipyard, trying to buy this boat, and finally making the whole settlement with reference to that.

What do we next hear him say? We hear him say, in the next place, that Dr. Luis promised him that if he should make three

trips on that boat—nay, further than that, if he should make one trip on that boat, then that boat should be his!

Why, gentlemen of the jury, was that true? If that was true, how can you explain the correspondence of Dr. Luis?

"I arrived yesterday very tired after being very sic in my way up. I have seen my people yesterday and to-day.

"I think I will be successful in fixing everything all right—I will know better to-morrow morning and will write to you again.

"Just keep very quiet and try as much as you can that the money you have to ask to pay everything"——

What money? If that was to be his boat, why should Dr. Luis be called upon to pay the expenses of repairing her? If that was his boat, why should Dr. Luis, gentlemen, be asked to pay for the machinery and the repairs that were made upon the boat?

Now, again:

"We have every reason to believe that the "saucy," as you call her, is under suspicion and as matters are now in a very important state so that increased care must be exercised, for the present we do not know whether it will be best to wait until the cloud blows away or sell this and get another in its place."

What—the boat that belonged to this man after making this trip to be sold by order of another man who had no right in her?

Again:

"Of course we understand that another may have to be put into better condition to compare with this, but safety is now the principal object. Under the circumstances you will see that all repairs and improvements should immediately cease until we have decided exact what to do. In case we sell we will, of course, want a new one and you might keep your eyes open. I send you 500 dollars to-day and will send you soon the balance. Of course you will under the circumstances keep as few of crew as possible."

Was that Captain Hudson's boat? Was there any agreement with reference to it? Ah, gentlemen of the jury, this letter which the prosecution has offered in evidence, this Report No. 3 to which they have referred, shows most conclusively that he did not own it, that he had no interest in it, and therefore that the statement that he made is wrong, and he knew it was wrong. He says:

"I received your letter of the 1st inst. to-day, and contents noted. The 500 dollar check was returned, as no doubt you will find out before this reaches you, so the next time you send a remittance you had better send it to my credit. The machine man is getting terribly impatient at the delay"——

Why, this is not his boat! This is not his boat! He has got nothing to do with it, except to stay down there and see that the repairs are made, and take the money that is sent him from New York with which to pay the bills.

Now, mark you, gentlemen, in the first place we find Captain

Hudson doing what none of you gentlemen of the jury would say was right with reference to his appropriation or his agreement to appropriate $2,000 of this money in connection with Smith.

In the next place, we find him telling what you, gentlemen of the jury, from his own correspondence, must know to be absolutely and entirely false. There we have got him again. Where do we find him in the next place? We find him in an enterprise which he himself says was unlawful, at a time when that vessel, according to his testimony, was stranded on the beach, with her bow in the mud, at a time when there were rumors of a Spanish gunboat in the proximity, and they were in danger of being fired upon and blown to pieces at almost any moment—at a time when he says himself that the men were disembarking, that the arms were being sent ashore, that everybody nearly was going ashore as fast as possible—what do we find him doing then? We find him then and there, under the plea that he was the friend of every man in that expedition, under a plea of friendship that had existed for the last fifteen years, collecting evidence against these men, against Carlos Roloff! That is what we find. In that emergency, at that critical period, he was collecting this evidence; and I want you, gentlemen of the jury, to bear that particularly in mind, and to ask yourselves to consider this matter thoroughly and completely; did Captain Hudson tell the truth, or did he lie, when he said that he asked for those names simply that he might know who his friends on this trip were? Is that true? Had he not been with them for seven days, and did he not know who they were?

Then, again, when he comes back to New Orleans, when he gets back within the precincts of the United States, and had his vessel there, he says he got a lot of correspondence from Dr. Luis, and he has produced here in this court a lot of that alleged correspondence.

There are business men on that jury; you are all business men. Did you ever know or even hear in your life of a man in Captain Hudson's position preserving so carefully, in such accurate manner, and in chronological order, all the evidence that he has brought here, unless, gentlemen of the jury, he had some special and definite reason for doing it?

Now, there you see Captain Hudson. And more than that, you see Captain Hudson upon the witness stand, a man, gentleman of the jury, who admits to you, or who claims to admit to you, that he is guilty with Roloff of a crime against this country, and who knows, when he stands there and says what he does, that whether what Roloff did was guilty or whether it was innocent, and whether he was with him or whether he was not, the United States, as Judge Morris said to you here yesterday, will not prosecute him for the crime of which he himself is guilty, if there be a crime.

What does he do? And then he steps forward and swears his

case through; he tries to make it a military expedition, and tries with his all to make Luis, the defendant in this case, a party to that military expedition.

But sometimes, gentlemen of the jury, the best laid plans of people are broken up by their own action, especially when those plans are wrong and wicked. There is an overruling Providence watching over every man, a personal Providence, as we all believe, which, in cases of this kind, when a man is helpless, and cannot protect himself, will furnish some providential way to take care of him and protect him from harm.

Now, with all the experience that Captain Hudson has, with all his knowledge of filibustering expeditions, he knows what it is necessary for him to prove in order that he may convict Dr. Luis. It is necessary for him to prove beyond the peradventure of a reasonable doubt that Dr. Luis knew this was a military expedition, and that he was a party to an agreement to send a military expedition.

In other words, gentlemen, under the law and under those instructions of this court, if Dr. Luis did not know that this was a military expedition that was to be taken aboard of this vessel, he cannot be convicted of the crime wherewith he here stands charged.

Captain Hudson comes on this stand and tells you, gentlemen of the jury, a peculiar story. In the first place, he finds out the weakness of the case of the prosecution; he finds out that it is necessary, in some way or other, to absolutely connect Luis with this enterprise. And after he had given his testimony in chief, and after he had been called back the second time, he was called back again to be asked something with reference to an alleged letter from Luis to a man named Smith, whose whereabouts is not known.

Did you mark, gentlemen of the jury, the particularity with which he quoted the language of that letter—"a party!" "Can you find Captain Hudson, to take another party?" Did you mark the positiveness with which he, gentlemen of the jury, stated to you what that "party" meant? And, gentlemen, when he was asked on the stand as to what was said by him to Roloff in the presence of Luis, he could not tell you one single thing that he had said, except that he himself knew he had reported progress, and he and Roloff were talking about the things connected with the enterprise!

Oh, when he thought he had Luis there on the letter, he could tell you that; but when he was trying to get Luis on the real testimony in the case, he could not quote to you one single statement or report that he made, and he could not tell you, in the interviews at the City Hotel, which are the crucial interviews in this case—the interviews there, gentlemen, are to determine, as far as the State's

case is concerned, whether Luis knew anything about this enterprise—this man Hudson could not, for the life of him, tell you the language that he used to Roloff in the presence of Luis. And to show you, gentlemen of the jury, further than that, that Luis knew nothing about the alleged military enterprise, when the question was put directly to Hudson: "Did Luis know that this was to be a military enterprise that you speak of?" what did he say. He did not say: "Yes." He said: "I believe so!"

"I believe so!" Why, gentlemen of the jury, you cannot convict Luis upon what this man believes; you cannot convict him upon supposition. You convict men upon what witnesses *know*, and not upon what witnesses *think*. And the court has instructed you, gentlemen of the jury, that it is a perfectly, thoroughly lawful and proper enterprise for a man to send troops and arms to Cuba, and that the only enterprise that is unlawful is to send those troops and arms in such combination as to make an effective body of men for the purpose of carrying on war. And the court has told you further than that, gentlemen of the jury, that it is your duty, in the case of circumstantial evidence, in the case of testimony given of suspected persons, to give this man the benefit of every reasonable doubt. And if he could have lawfully sent a proper enterprise there, then it is your duty to presume that his intention was not to evade the law, but that his intention was to do what was proper and lawful. That is the instruction of the court, as I understand it.

In order that I may show you the bias of Captain Hudson, and in order that I may further call your attention to the absolute unreliability of everything that he has said, Captain Hudson testified that when the men were taken aboard at a place called Harbor Key, they came aboard armed. There were other people who saw these men come aboard—or, rather, let me put it a little more exactly—there were other witnesses who *said* that they saw these men come aboard. There was John Earickson. There was John Cronin. There was John Lockney. There was Stephenson. Hudson, Cronin, Lockney and Earickson are to-day confessedly in the pay of Pinkerton detectives, supposed to be employed by the Spanish Government. Stephenson, a man who comes here and tells what he himself believes to be true, under nobody's employ, compelled to come here by the ordinary process of this court, and gets nothing to come here except his expenses. I asked him whether or not he saw Captain Hudson when the men came aboard. He did not see him. I asked about the time these men were coming aboard at the place alleged to be Harbor Key, and they did not see him. I asked John Earickson. Now, mark you, Captain Hudson's testimony was that he stood within three or four feet of these men as they boarded the boat. I asked John Earickson, and John Earickson said the captain was in the forward cabin.

Now, here were two men that did not see him. Lockney also did not see him; Cronin did not see him; Earickson saw him down in the forward cabin—knew he was there.

If that be true, gentlemen of the jury, have you not a perfect right to conclude that the reason why Captain Hudson testified that this was an armed expedition was in order that he might earn this money that he is getting from the Spanish Government to have these men put in jail and fined? You must conclude, if you believe anything from the testimony, that Captain Hudson was not there when they came aboard, and he is testifying to something that he did not see, something that he simply believes.

Now as to the nature of this expedition. I am not going to dwell much upon that. You are just as capable of determining what is and what is not a military expedition from the testimony as I am to tell you what it is. But I am simply going to call your attention to certain surrounding circumstances, so as to show that the expedition, as far as I can understand it, was not an organized expedition, organized for the purpose of doing some specific act of warfare, and that it had no definite and particular object in view, as far as that body of men acting as a unit upon that vessel was concerned.

In the first place, they talk about "officers." There is a whole lot of testimony about Gen. Rodriguez and Gen. Roloff and all those people—lots and lots and lots of that kind of talk; but when you come right down and ask these witness, "Why do you call them 'General'?"—"Oh, they were generals in the last war."

What did "Gen." Roloff do? Gen. Roloff stayed in the cabin. Well, what kind of an appearance did the officers aboard that boat make—what did they do? Oh, well, when you come down to sift the testimony, the only thing in the world that in any way suggested that these men were under anybody's control was that, day by day somebody would act as an officer of the day to keep these fellows from drinking too much water. That is all. Somebody had to do that. No matter how disorganized, or how disintegrated, a body of 150 men might be upon a boat, no matter how thoroughly dissociated they might be upon a vessel of that kind, you will readily see that their own idea of self-preservation and protection would be to appoint a committeeman to see that some did not get more water than they ought to. And when you come down to it, that is the only evidence in the case on that point; and they distinctly say that none of these men took any part whatever in the voyage, while the boat was traveling over to Cuba; that the only time that anybody appeared to be doing anything was what Roloff did when these men came aboard and when they left; that they were under no charge; that they were lying around the deck in squads; that they were talking about going to Cuba, and all that kind of thing, and that they were allowed whiskey when they

wanted it. Now, do you suppose for one minute that these fellows were going to be allowed plenty of whiskey, and get what they pleased—because Cronin got what he wanted, anyhow—get what they pleased on an expedition of that kind, if it was military in its nature, and supposed to be under somebody's discipline. Now, my judgment about it is that these men had upon their persons, when they came aboard that boat, all sorts of indiscriminate knives. I believe that, and I think there is no use of trying to deny it. But I believe that these men only had in their minds one idea, and that was that they would go to the island of Cuba, and after they got to that island, they would enlist, not in a body, as they try to make out in this case, but they would enlist as individuals in the Cuban army, to fight for the freedom of Cuba. That, gentlemen, any man has a right to do. Any man in that jury-box has a right to-day to leave here for Cuba and enlist in the insurgent army if he wants to do it. Nobody will gainsay that. And if the whole panel of this jury choose to go to Cuba, independently, without any agreement to act as a combined body, they have a perfect right to do that.

The only thing that the law says you shall not do is to officer, equip and arm a lot of men, with a definite purpose—a company, for instance, of the Fifth Regiment—with the intention and with the idea of doing a particular act of offensive warfare against some people and against some place.

Now, gentlemen, I have already spoken to you longer than I expected; I only intended to talk about twenty minutes. I want to impress upon you, just as I close, this fact: That even if you believe Captain Hudson's testimony to be true—this is my statement of the testimony—you cannot render a verdict against Dr. Luis in this case, because Captain Hudson himself does not prove that Dr. Luis knew that there was to be a military expedition. I am assuming, now, that the expedition was a military expedition, according to the statements here in the testimony. In order to convict this man, you must know that he knew he was going to do somes thing that the law did not permit him to do; and, as the judge hatold you, in order to do that, you must weigh all the testimony, and then if there is in your minds a reasonable doubt of his guilt, you must give him the benefit of that doubt.

In conclusion, gentlemen, let me again ask you, when you come to consider the acts of this man, to remember that you are dealing with the case of a man who has done that which nobody would object to, were it not against the law of this country. He has simply done what we, as American citizens, praise our ancestors for having done; to help his people to fight in the cause of liberty and freedom. And that being the case, do not consider his acts like the acts of a criminal, but consider them as the acts of an honest man, who wanted to help Cuba to the freedom that everybody in this country wants her to have.

Mr. JOHNSON. May it please your honor, and gentlemen of the jury: I will try and make this thing as clear as practicable, so that we may discuss something that we all understand.

This is an indictment against Dr. Luis, the traverser here, who is charged with having entered into a combination to fit out an illegal military enterprise from the territory of the United States against the territory of Spain, in Cuba.

Now, that is the crime. It is an an alleged combination between Dr. Luis and some other persons, one of whom is General Roloff, and the other a Mr. Smith. It is the combination between three men to fit out an enterprise here in Baltimore, to carry an illegal military expedition from some point in the United States to Cuba. That is the crime.

To prove that crime, you must prove—

First, that they conspired; that the combination was set on foot here in America.

Secondly, you must prove that it was set on foot to carry out a military expedition to Cuba.

Thirdly, you must prove that that military expedition was from the territory of the United States; and,

Fourthly, you must prove that it was against Spain in Cuba.

Those are the four ingredients of the crime; and if all these ingredients are not proved, then no crime has been proved against my client, Dr. Luis. Each one of them must be proved against this traverser. You cannot consider that he is guilty of conspiring, you cannot consider him guilty of sending out an expedition from the United States, unless you are also satisfied that it was to be against Spain. You cannot be satisfied that he was guilty of conspiring in Maryland to proceed against Spain in Cuba unless you are also satisfied that he was a party to sending forth a military expedition from the United States. Those things are absolutely necessary to be proved against him. My business here will be to prove to you that while it has been proved that there was a combination to set on foot an expedition, a combination in Maryland to set on foot a military expedition from the United States, it has not been proved that Dr. Luis knew that it was to be this military expedition.

That is the point of this case, so far as I understand it.

It is a fact, gentlemen, that Dr. Luis made an arrangement with this Captain Hudson to come to Baltimore and buy him a boat, as Hudson told him, for $15,000; but Hudson and Hudson's broker and partner purloined the $2,000 between Baltimore and New York. That is a fact. They did make a bargain here to buy a boat, and they did buy a boat for $13,000, when they told their principal they were going to pay $15,000 for it.

It is a fact that that boat was provisioned here. It is a fact that Gen. Roloff, who is a Cuban soldier of some experience, and who has also had experience in other wars, I understand (I have never had

the pleasure of knowing him) did arrange with Captain Hudson, here in Baltimore, to provision that boat, for the purpose of going to some of the Florida Keys, and taking off a force of men there. Up to that point Dr. Luis was cognizant of what was going on. He was a party to the purchase of the boat; he was a party to the provisioning of the boat; he was a party to the sending of the boat to the Florida Keys to take men on. But when you come to taking men on that were armed men, to make a military expedition against Cuba, he was not cognizant of that, and there is no proof here to convict him of that. The only two connecting links we have got to indicate a guilty knowledge on the part of Dr. Luis of the armed expedition from the Florida Keys are two expressions on the stand of my friend, Captain Hudson.

One of them was that very curious testimony he gave about the interpretation of a letter which Smith said he got from Luis, and which he identified on the stand here as being in Luis' handwriting. Luis wrote to Smith to find out if he knew where Hudson was, and whether he was willing to "take out another party."

Well, my friend, the captain interpreted that to mean to take out another filibustering expedition. But the captain had never taken out any filibustering expedition that Luis knew anything about up to that time, except one. His testimony is that he had only taken two filibustering expeditions to Cuba—one in the war of 1886 and one in the war of 1868–'78. In '68–'78 it is in evidence that Luis was in the ranks in Cuba, fighting for the rights of his people, and he knew nothing about the expedition of the "Hornet" at all. Therefore, when he talks about carrying out a party, it could not refer to the "Hornet." But he did know about this man taking out a party in 1886 on a vessel by the name of the "Morning Star," on which Hudson testified on the stand he had carried a lot of arms from New York down to San Domingo, and waited three or four days in the bay, and then came away without doing anything. That is the only expedition which Luis knew about Hudson being connected with; and all Hudson had a right to conclude from Luis' message to him was that he wanted him to take out another "party," the kind of party he had taken out before, in 1886, on the "Morning Star," which was a perfectly legal enterprise, merely taking a load of arms to Jamaica. Therefore, all this inference that it was referring to some illegal enterprise is from Captain Hudson's imagination, and is put in for the purpose of connecting Dr. Luis with a guilty knowledge as to the criminal act of carrying out a military expedition from the islands of Florida, the Florida Keys, to Cuba.

The only other instance in which Captain Hudson seeks to connect Dr. Luis or Roloff with a guilty knowledge about the transaction in the Florida Keys was in one item of his testimony he said that Roloff and Luis were at the hotel here under fictitious names—one of them registering as Miller, and the other as Luccas—and he reported to

them every night what he was doing. He would buy provisions he would buy vegetables, he would buy meat—some fresh meat and some salt meat, he would buy the ordinary provisions for a vessel going on a voyage, and at night he would come back and report to Roloff what he was doing; and in that conversation, Roloff would discuss with him the projected voyage to Florida, that he had a hundred men down there, and those hundred men were going to be carried in this vessel to Cuba; and he said Dr. Luis was present at the time. But he did not testify that Roloff explained to this man that he was going to send down there to break a law of the United States by taking an armed expedition off from this Key in the West Indies. He did not explain that to him. That was perfectly consistent with Luis' innocence, as he now professes and protests that he is innocent; it is perfectly consistent for him to sit there and hear Roloff and Hudson talking about going to Harbor Key and Pan Key and taking off a hundred men that had been left there, and still not know at all that these men were organized as soldiers, and not know at all that they were going on a military expedition. Why, the court has told you that American citizens have got a right to go to Cuba in any numbers they please, and in any way they please, subject to the risks involved; I am talking now about the law of the United States; they have got a right to enlist in the army of Cuba when they get there. That is a right of the American citizen, and it has not yet been taken away from us by this administration in Washington, as a great many of them were by the last.

Therefore, gentlemen, you have got this case down to this point: that there is nothing to connect Dr. Luis with a guilty knowledge of the military expedition to be taken by the "Woodall" from Harbor Key to Cuba except the two statements of Captain Hudson, one of them about that letter in New York, where Luis wrote to Smith to know if Captain Hudson could be engaged to take out another "party." As I have shown you, the only party Luis knew of his taking was this party which went to San Domingo with arms, which was a perfectly legal transaction, which accomplished nothing, and came back and brought the arms back to New York. The only other item of connection between the two is where he says Luis sat there and heard Roloff discuss with him the sending of the "Woodall" to Harbor Key and getting a hundred men that had been left there. But that does not prove that Luis knew this was to be a military expedition from Harbor Key to Cuba at all; and to convict a man of the crime here charged, and deprive him of his liberty, you have got to be satisfied that he had that knowledge.

Now, I do not believe either of those statements of Captain Hudson, and I think I can make it perfectly clear to you that you ought not to believe them.

This case depends upon the one proposition of the contents of the letter which Luis wrote wanting to know whether Hudson would take another party down, and, secondly, Luis' presence in Roloff's room here in Baltimore, at the City Hotel, when they were talking about this expedition.

I do not believe either of them. I believe they are interpolated into the evidence simply for the purpose of convicting this man on precisely the testimony necessary to be put in to convict him. And I think Captain Hudson has, throughout this whole case, displayed so much alertness, so much discretion, so much intellectual acumen, he knows exactly what he was doing, that he is the very man to do it.

Of all things on earth in human testimony, the most difficult thing is, where there is a whole web of truth and lies, to pick out the little truth and pick out the lies. That is a dangerous testimony, gentlemen of the jury—where the whole testimony is true, the whole testimony is accurate, except that right in here and there and another place there are little lies to do the damage, and the jury being persuaded that the general mass of it is true, will swallow the lies as well as the truth, and the damage is done.

I do not believe that Captain Hudson tells the truth about these two detailed items of evidence; and I do not believe it for this reason; he has told you himself, in his testimony, several very inconsistent and remarkable things. He has put himself down as obtaining money under false pretences before he left New York in the purchase of the "Woodall;" he got two thousand dollars out of Luis then, or Smith, or whoever the broker was; he plundered the Cubans for two thousand dollars before they started; when he came down here he got fifty dollars out of the ship chandler. And he does not start, therefore, in the investigation, with a very fine moral atmosphere around him, according to my conception men's of characters.

But Captain Hudson, besides that, says that he went to Cuba; he landed on the coast of Santa Clara province; he commenced landing at seven or half-past seven o'clock; he was landing until half-past one o'clock in the morning; he was landing on a coast where any moment a Spanish gunboat might fire up within three miles of him, and he would be gone up, because in those sand-banks—they call them keys, but they are nothing but sand-banks—are so situated that you have got to slip in a little channel so as to get inside of them; if he got caught, the chances are ten to one he would be shot on the spot; that is the way they do; that is the ordinary method of proceeding; but under all those dangers, under all those circumstances of peril, he gets from Gen. Roloff a list of names of the men on the boat. He says he did that merely for the purpose of having a list of his friends.

Well, I don't think a man on the jury believes that story for one minute. I tell you, when a man is on a hostile coast at midnight, with death staring him in the face, and stalking all around him, he doesn't want any list of autographs; and that list was gotten at that time for the purpose of furnishing evidence to the Spanish consul when he came back to New York. That is what he did that for.

He says, also, that just before he left the boat he got a cablegram in cipher from General Roloff—that commercial code cipher.

That requires you to believe, first, that General Roloff knew what the commercial code was. Secondly, it requires you to believe that General Roloff knew what the code was, and could write it at midnight by the light of a ship's lantern. You can't have a light when you are landing arms on a hostile shore; you have got to do it in the dark. You can't afford to have lights about there; all the lights of the ship must be out; all the lights on the boats must be out; you are carrying powder, carrying dynamite, and you have got to work in the dark; and neither Roloff nor any other man could have written a cablegram at night in cipher. He says he kept the cablegram for the purpose of keeping it from being misconstrued. Well, what difference on earth would it make whether it was misconstrued or not, after the expedition was over? He went down to Progreso, in Mexico, and there sent his cablegram, but he keeps the original cablegram. He says that is Roloff's handwriting, and Roloff wrote it just before he left the ship; and, mind you, he did not leave the ship until somewhere near one o'clock in the morning.

I say it is utterly impossible; no man on the face of God's earth could have done that on a dark night, or by moonlight.

And then another instance. He was dissatisfied with Roloff, because in 1880 he had engaged in an expedition with Roloff—to wit, engaged to carry a vessel out to Cuba with arms. But Roloff had put a detective on him, and had discharged him and put another man on the ship, and therefore he had a quarrel with Roloff, and he proposed to send Luis to the penitentiary because Roloff put a detective on him.

Well, I think probably Luis ought to be punished for not having put a detective on this man at the start of this thing. Then this case might never have occurred; we would have discharged Hudson before we left Baltimore rather than afterwards.

Captain Hudson says Roloff played him such a mean trick that he would not have gone down there if he had known that Roloff was in this affair; and yet he comes down here, and he spends ten days in conference with Roloff about this expedition, and in the next breath he swears that Roloff had treated him so meanly that he would not have gone if he had known Roloff was going.

Why, that is Lie No. 3 in this man's testimony.

I don't think it is credible. I don't think you can get it into your heads at all that the statement about carrying the party con-

tained in that letter meant to the Spanish Main, nor that the statement that Luis was present, understanding all about this talk with Roloff about the expedition to this key, the Florida Keys, nor the statement about his not going with Roloff, can any of them possibly be true.

Therefore I say I am at liberty to ask you to disregard the statement of Captain Hudson that connects this traverser by guilty knowledge with the expedition to the keys in Cuba. He may have known that the men were there, mind you; he may have known that the ship was going there to get men; he may have assisted in buying the ship, and in fitting her out, and sending her down to this key to get a hundred men who had been left there. All that may have been done; but all that would have been legal. All that would have been legal. But it is having the knowledge that I have indicated that is necessary to make a crime of it. I say there is an absolute want of proof here in that respect.

Gentlemen of the jury, this man has told you that for twenty-five years he has been a friend of the Cubans and of the Cuban cause; he has carried armed boats of men and of ammunition to the struggling Cuban insurgents; he is bound to them by ties of blood and life and death. He has had their lives in his hands time and again, as they have had his life in their hands. They were always faithful to him. He says that he was affronted because he was engaged to go on that expedition on condition that the vessel was to belong to him after the expedition was over. That is evidently not true, because after he came back from Progreso and New Orleans, he allowed the vessel to be transferred in New York; and if the vessel had belonged to him, had been promised him, he would not have done that. This vessel was bought with Cuban money, and the title was put in his name for the purpose of having an American citizen the owner of the vessel; then when he was ordered to transfer the vessel in New York, after the expedition was over, according to his statement, it belonged to him; and after it belonged to him, he put it out of his own hands and into the hands of the revolutionists in New York! Why, it is utterly absurd to talk about it.

Then another thing was that he was promised permanent employment at $150 or $200 a month, and $1,500 bonus. Well, he was kept from June, 1895, until January, 1896, on the pay of $200 a month, and a bonus of $1,500, which he got; and thereupon it was found that he was unsatisfactory, he was discharged from that job—they had no other expedition, I suppose, to send him on—and thereupon he goes to the Spanish consul.

My friends, I will die in the belief that he went to Cuba under the instructions of the Spanish consul; that he went down there under the deliberate employment of the Pinkerton agency; that he kept that list of names and kept that list of names, he got that

cablegram from Roloff just before he left the ship and kept it—in short, he got and preserved all this evidence for the purpose of coming back here and initiating this precise prosecution.

You cannot give me an intelligent explanation of such conduct as his on any other theory. He had communication with the Pinkertons and the Spanish consul before he went there. He stayed in communication with the agency in New York during all these succeeding years where he could be useful in giving information to the Pinkerton agency and to the spies of the Spanish consul. All that was going on; and then when it became time to break with the Cubans, he goes straight to the counsel in a Government office in New York, who sends him to the counsel of the Consul-General of Spain in New York; and there he makes his terms that if he testifies all about this thing, he will be protected.

Well, I ask him: "What authority had the Spanish consul to give you a promise of protection?" "Well," he says, "I didn't have any promise of protection." The judge explained that if a man came into this court and made a traitor of himself, and made an exhibition of a Judas Iscariot and Benedict Arnold combined, he would be protected here.

I think your honor will limit them very much when your attention is drawn to the case. I do not think this court will allow a scoundrel to come into court here and shift the burden off his shoulders on to somebody else's shoulders, merely by making a State's witness of himself.

The COURT. If it makes a true statement?

Mr. JOHNSON. I do not believe your honor would allow it to be done. I do not believe your honor would allow him to go on the stand; I do not believe the district attorney here would allow such a man to go on the stand.

The COURT. In a case where a man who has been a participator in a crime undertakes to testify to it? Oh, it is often the only evidence that can be obtained.

Mr. JOHNSON. Yes, I know that; but not the principal man, not the leading man, not the head assassin in the Cronin case. I say it would not be done in any English-speaking court in the world; you would not allow the leader—the chief assassin, the great criminal—to come into court and clear himself of responsibility by making a clear breast of it. That is done under the discretion of the court and the prosecuting attorney.

Mr. MARBURY. Do you call him the chief man, the man who was engaged by the Cuban "Junta," or whatever you call it?

Mr. JOHNSON. This man is the chief man of this conspiracy. He went down there and he got these men off, and he landed them in Cuba. He is the chief man to this extent, that he keeps in communication with his principal in New York, he brings the evidence back there to them, he explains the evidence to them; he says:

"There is a list of the officers that was on my boat; there is Gen. Serafin Sanchez"—poor fellow, he has been killed since; "there is Col. Rodriguez; there is Col. Castillo"—he tells all about who they are; and he has kept that evidence from midnight of the night of the landing down to the time of this trial in the hands of the Spanish authorities.

Now, I say such a man as that is not entitled to the protection of this court; and I hope that after this case is over, I shall see him here tried for his participation in the conspiracy which he himself has admitted on the stand that he has been guilty of and has accomplished.

He is the man who is proved to have been the leader of the conspiracy, and of the whole scheme of carrying these soldiers to Cuba; and if anybody is to be punished, he is the man to be punished, because he induced these people to go into this thing, he got them into it, he prosecuted them for the purpose of betraying them, and then has betrayed them here.

But that is aside, only in relation to his credibility. I say the whole case depends upon his two statements that Luis heard him discussing the question with Roloff in his room at the City Hotel, and his statement as to that letter written to Smith by Luis, asking whether Captain Hudson could be employed to take another party out. Those are the only two things that connect Dr. Luis with this conspiracy at all. They depend on the unsupported statement of Captain Hudson; and I have shown you that Captain Hudson's position in this case is such that you ought not to convict a man and ought not to send a man to the penitentiary on the face of his statement. Great Heavens alive! I have never seen a case, I have never heard of a case in an American court as full of foul treachery and base cowardice as this is! I never heard of it! Here is a man associated with men day in and day out for years at a time. Here is a man going on ventures of life and death; and at last, for the sake of some money, somewhere, he comes here and betrays the whole of them!

Why, there never has been such a case here! Such a case as that cannot occur in American law. It is a phenomenon here. I have read of such things in other countries, where the police get men to go into this place and that place and another place to get evidence; but I never heard of it here in an American court. And you thank your God this day that you are members of an American court! You thank Heaven that you are born American citizens, and you propose to live and die such; because you take my word for it—and I am older than most of the men on that jury, and have had a larger experience—there is no boon in this world that any of us will ever have equal to your birthright of American citizenship. Imagine a society where a man may be arrested without a warrant, where a man may be incarcerated without bail, where a man may

be held in a dungeon for years without a *habeas corpus*, where a man may be tried in his absence by a judge, without being confronted with the witnesses against him! Imagine that—and then imagine what feelings these Cubans have about trying to get their country out of such a position as that. That is the struggle that the Cubans are making, for the purpose of securing that liberty which it has got to be the theory of mankind is a God-given right.

We believe, perhaps without ever stopping to consider it, that every man has a right to govern himself, and every man has a right to control his life and liberty and his property by himself, and not be controlled by anybody else. Do you suppose, or do any of these gentlemen suppose, that here in the atmosphere of America, here with the example of a hundred years of liberty spread all over the world, here right within the United States, that these outrages can continue in Cuba? Have not these expeditions and revolutions been going on from 1822? Didn't they have a war from 1868 to 1878? They have a war now, which is a war of extermination, because, as certainly as I live, the Spanish Government has issued the edict of entire extermination against the Cubans. Didn't they exterminate the Caribs four hundred years ago when they conquered Cuba? Didn't they exterminate the Mexicans when they conquered Mexico? Didn't they exterminate Peru? There never has been a time in which the policy of that government has not been to put to the sword every man who resists them, and whom they are able to overcome. And this thing will go on eternally and everlastingly until that island of Cuba becomes as free as this State of Maryland is, when every man shall have the right to his own house, to his own liberty, to his own wife, to his own children, and to a fair trial by an impartial jury! That is what we are charged with trying to accomplish for our friends—our friends in Cuba.

I believe these things constitute the greatest boon that has ever been vouchsafed to man. Here, on the other side of the water, at the present time, you see one-half of the population of a great continent stirred up at the theories, at the ideas, at the sentiments, that come from here. All France is permeated by them; all Germany is honey-combed by them; all Russia is stirred to the very depths by sympathy with American ideas and American institutions. The combination is coming on right now on this little island of Crete to crush out the right of men to govern themselves, when it will fall on another and great nation, probably, and then on another one, and eventually the great fight for human liberty is to be made here by this nation to which you belong.

What I want to direct your attention to, above all other things, is how unjust it is, upon the testimony of such a man as Hudson has exhibited himself to you to be, to deprive another man of his liberty.

Now, if a man is guilty, he ought to be punished. The laws ought to be obeyed; the laws ought to be enforced; that is what we all believe, as American citizens. We do not ask anybody to sympathize with us when we break the law. But we do claim that we have broken no law; that whatever was done down there at the key was done without our knowledge and without our consent. We had a right to send supplies there; we had a right to send shoes there; we had a right to send men there, providing they did not go as a military expedition. And, inasmuch as that is our condition here, we ask you for a verdict of acquittal. We ask you to vindicate this character that has been impeached by this captain who has exhibited himself before you.

I think that, gentlemen, is the case, as far as I understand it.

Mr. MARBURY. If your honor please, and gentlemen of the jury: This case being one rather unusual in character—that is to say, not unusual in character at all, because numberless cases of the same kind have come before the courts, but being the first case of the kind with which, probably, you have had to deal—a few preliminary explanations may properly be in order.

It is well for us to understand one or two simple things in the beginning. In the first place, this is not a controversy between Captain Hudson and Dr. Luis which you are called upon to decide. If there is any controversy between these two gentlemen, if one of them has done the other a wrong, there are other tribunals provided in which they can have that controversy settled. If Captain Hudson feels aggrieved at the treatment which he has received at the hands of Dr. Luis, or of Gen. Roloff, or of Mr. Senor Estrada Palma, or any other gentleman, he is at liberty to institute his suit in a civil court and have redress, if he is entitled to any. It seems to have been his impression, and it seems still to be his impression, that he has sustained some injury of that kind; that they have violated some obligation which they had assumed towards him, and he has acted in that way. He has actually instituted, as we are informed in this testimony, a suit against those gentlemen in the proper courts in New York City, and that suit is there pending.

On the other hand, if Dr. Luis has any cause of personal grievance against Captain Roloff, he is at liberty to do the same thing—institute proper proceedings in a proper court; and those courts will determine those questions as they would determine any question of civil right between man and man.

But I want those gentlemen, both of them—both Dr. Luis and Captain Hudson—to distinctly understand that we, and you, especially, as a jury in this case, have nothing to do whatever with their personal quarrels. We are not here—the Government's attorneys, my colleague, Mr. Lee, and myself—are not here as counsel for any witness. We are here for the purpose of seeing that those who have violated the laws of the United States are punished according

to law, no matter whether they be Spanish, or whether they be Cuban, or whether they be native-born.

This is a case of the United States against Luis and Roloff and Smith—not the case of Captain Hudson against them. The question is not whether he has done wrong towards Captain Hudson, or done right to him; but has he violated the law of the United States? Have a lot of men, many of whom are not natives of this country, who probably have very little interest in the welfare of the great American Republic, who come from a foreign shore themselves—have they, or have they not, come here and entered into a league and a conspiracy for the purpose of violating our laws, and embroiling us in controversies with other nations? That is the question which you have to pass upon in this case. And it is very important, gentlemen of the jury, that you should not fail to appreciate the gravity of that question. It is possible that some of you do not realize the very grave character of the responsibility which is assumed by the gentlemen who are called upon to administer the law in these cases. The law which these men are charged with conspiring to violate—you have heard it read several times—is a law which prohibits any persons within the territory of the United States from setting on foot, or providing or preparing means for setting on foot, a military expedition against the territory of a foreign power or government with which the Government of the United States happens to be at peace.

The specific charge in this particular case is that Luis and Roloff and Smith, and probably others—but those three certainly—entered into a conspiracy to do that very thing; they entered into a conspiracy, or agreement, or arrangement to set on foot an enterprise and provide means for carrying out an enterprise, a military expedition, from the coast of Florida to Cuba, to make war against the Spanish Government, we being at peace with the Spanish Government.

That is the charge; and it is on the question of whether they have been guilty of that offense that you are to render your verdict.

Now, it may be proper for me to give a few words of explanation of the nature of that legislation, that law, and the principle upon which it is based.

In the first place, this statute was not intended at all for the special benefit of or as a special favor to any particular nation. It was not intended as a special benefit to Spain. It was not enacted for the benefit of Spain any more than of any other country. It was enacted for the purpose of enabling the officers of this Government, and this Government itself, to more effectually discharge the obligation which it owes, which the United States owe, to other countries, to the other civilized nations of the world. Nations have duties, legal and moral, as well as individual. One of the best recognized duties that nations have, a duty imposed upon them not

only by the laws of justice but the common international law of the civilized world, the law the recognition of which mainly distinguishes civilized from uncivilized nations—one of the first and most clearly recognized obligations of international law which rests upon one nation is that of keeping itself out of the quarrels of other people with whom it is at peace.. The law of nations says: "If you are at peace with another nation, if you profess to be a neutral nation, you must do and avoid doing certain things. One of those things which you must do is to prevent your territory from being used as a base of military operations against that of one of the nations with whom you are not at war." If two nations are at war—if Great Britain and France, for example, were at war with each other to-day, the United States, being a neutral nation, not having declared war against either party, would be bound not to permit military expeditions to be fitted up in this country and set on foot and embark from this country against either England or France. If they did allow it, it would be an act for which they would be held responsible, for which either France or England, whichever it happened to be, after the war was over, would certainly make demand for compensation upon the United States, and which they would be bound to receive. The United States would either have to pay the damage which was done by reason of their permitting their soil to be used as a base of military operations, or they would have to fight about it. They could not refuse to pay the damages. It would be a just obligation, which they could not refuse in the face of the civilized world. If they did refuse to do it on a clear case, they would put themselves beyond the pale of civilization; they would cease to be recognized as among the civilized nations of the world, the nations which are entitled to the benefit and protection of the international code; they would be classed among the outer barbarians. No first class power has ever occupied a position of that kind, or ever can. There has never been a more striking illustration of that than in the case of the "Alabama." You remember, during our late civil war in this country, the "Alabama," a Confederate cruiser, was fitted out in the ports of Great Britain; that the British Government allowed it, or shut their eyes to it, and did not take proper precautions, at any rate did not exercise any very great degree of vigilance to prevent Captain Semmes from going over there and having the "Alabama" built or rebuilt and fitted out with arms, and allowed her to sail away from there for the purpose of attacking the commerce of the United States. She did attack the commerce of the United States with very decided success, as you all know. She pretty nearly swept the Stars and Stripes from the seas. It was a pretty well conducted enterprise, one for which those who believed in the justice of the cause have had great reason to congratulate the leader.

But England, at that time, professed to be at peace with the Government at Washington. She claimed to be a neutral nation. She had not taken sides with the Southern Confederacy. And when the war was over, what happened? Uncle Sam sent in his bill—a pretty big bill, too. He said to the Government of Great Britain: "Here you have allowed a government which was at war with me at that time, you pretending to be a peaceful and neutral power, to use your territory as a base of military naval operations against me. You have allowed the Confederates to go there and purchase and equip a cruiser under the protection of your port, to equip her and furnish her and provision her and send her out on the ocean to attack my commerce, and you have destroyed millions and millions of dollars. Now, you have no business to do that. The duty which you owed the United States as a neutral power was to prevent that. You had no right to allow Captain Semmes to sail out of the harbor with that armed cruiser. You have neglected that duty, and you ought, in justice, according to the rules of international law, to pay us for damages."

Why, gentlemen, Great Britain never disputed that proposition for a minute. She recognized perfectly well that the proposition was perfectly sound. The only question was as to the facts, what the damage had really been, and whether she neglected to take the precautions which she should have taken in order to prevent the escape of the "Alabama."

That question was submitted to the arbitration of an impartial, independent tribunal, sitting in the city of Geneva, in Switzerland, composed of representatives of various nations. And after hearing the evidence fully, hearing the case fully and carefully presented, you know that the verdict of that tribunal was in favor of the United States, and that an award of twenty millions of dollars was rendered against Great Britain in favor of the United States, on account of the losses resulting from the depradations of the "Alabama." You know that Great Britain paid that bill, every cent of it, and you know that we had so much money resulting from that that it took us years and years to find out to whom it should be paid. I do not believe it has all ever been paid out yet. We not only paid all the people who could show any direct losses, but we paid even the losses resulting from the increased insurance rates owing to the existence of the "Alabama," and alll sorts of consequential damages; and still the money was hard to get away with; every dollar of that money had to be paid, because Great Britain had neglected to do her duty toward the United States and enforce the neutrality laws; that is all.

Now, gentlemen of the jury, just look to this: the question is this: Have a lot of purely irresponsible Cubans, men who are not Americans, who know nothing and care nothing about our laws, got a right to come here on this soil and organize what they call a

Junta, or whatever you choose to call it, in the city of Baltimore, for the express purpose of violating our laws and exposing us to the risk of having to do exactly with Great Britain did in the case of the "Alabama?" Do you want to help pay the bill when it is presented? If we let these people do what they have been doing here, won't Spain present us a bill? Won't we have to pay it? We will either have to pay it, gentlemen, or we will have to fight with Spain, or we will have to incur, what I think would be still worse, the odium, before the eyes of the civilized world, of refusing to discharge our obligations to Spain simply because we thought we were a stronger nation than Spain, and could afford to ignore her.

That is a reputation which the American people cannot afford to get. They cannot afford to have the reputation of being a people who do not regard their obligations to other nations. They cannot afford to secure the reputation of being a nation which will not discharge towards other nations its just obligations, which exacts a regard for the neutrality laws of all other nations, and yet will not regard those laws or perform its obligations itself.

I say, as the court has said to you in this case, every consideration of national honor requires that we should enforce these neutrality laws, that we should not allow our territory to be made the basis of military operations. There is not a man on this jury who has any proper sense of responsibility, gentlemen, who must not recognize that as being true. We are not discussing this question before a lot of schoolboys. I assume that I am talking to gentlemen who can form a conception of the importance of this matter, and, having formed it, and realizing it, will be bound by their consciences to give them the due and proper weight.

Now, I only say that for the purpose of making you understand that this is no trifling case. This is no game that we are playing; it is a dead serious business; it is a duty which we have got to perform. It is not a popular duty. It is not a duty by the performance of which you are going to win the applause of the public. People naturally sympathize with any nation or any people which occupies the attitude before the world of appearing, at any rate, to be struggling for freedom, for the rights which we enjoy in this country. Naturally, we sympathize with them. Naturally, the great mass of people, at any rate, in the community who know nothing about the real merits of the matter think there is only one side to it; and they say: "Why, you ought not to prosecute these fellows; they are only helping the cause of liberty," and all that sort of thing.

Now, that is one way to look at it. That is the way the sentimental ladies look at it; that is the way the schoolboy looks at it. But a full-grown, responsible citizen cannot afford to look at it altogether from that side; he has got to look at it from the side of national honor and national duty.

Gentlemen of the jury, just think of it! Let us trace it right back. We have here the proclamation of the President of the United States, which was read to you this morning, in which he warns these people to discontinue doing these things, warns them it is the duty of the United States Government to prevent them from doing it, and he gives express orders to every officer connected with the administration of justice to see that every violation of this law is punished. That order comes to every district attorney in this country. Now, what would you think of me if, having knowledge of such violation of the law, and having had direct, peremptory instructions from the President to punish the violators of the law, I should neglect my duty and fail to have them indicted, or called before the attention before the grand jury?—simply because I said, "I sympathize with Cuba," or some other sentiment, no matter how meritorious the sentiment itself might be. What would you think of a district attorney who, having sworn to do his duty, neglect to perform a duty of that kind simply because it was distasteful or disagreeable to him?

Why, gentlemen of the jury, it is not pleasant for me to prosecute those who violate this law or any other law. It is not congenial business to me, and never was. I would far rather be on the other side of the trial. But I say if I neglected to perform that duty, I ought to be cashiered at once. The President would have a right to say: "Well, I don't want your services; you think you can put your judgment against that of the fathers of the nation, who framed this law—if you can set up your little opinion against that of George Washington, at whose instance this law which you are called upon now to enforce was first enacted, then we will get another district attorney."

What would you think of a man who acted in that way?

Now let us trace it a little further. What would you think of the grand jurors, the men before whom the facts were laid, if they said: "Well, I have sworn to indict every man who has violated any law of the United States. Here is a law of the United States which forbids these things to be done against foreign nations who are at peace with us; and here is a man who has clearly violated that law; and, although I have taken an oath to indict everybody who has violated any law of the United States, I won't regard my oath in this particular instance; I won't indict him, because I sympathize with Cuba?"

What would you think of the members of the grand jury before whom this case originally came if they acted in that way, and allowed themselves to be influenced by those sentiments?

Would you not say that they were not responsible men? Would you not say that they were men who did not regard the obligation of their oaths, and did not have a proper conception of their duty as citizens?

The same rule, it seems to me, gentlemen of the jury, applies to the grand jurors. The grand jurors have discharged their duty; we are here for the purpose of asking you to discharge yours, however disagreeable or unpleasant it may be.

Now, let us see what the duty is. That is the question.

I listened with great care to the arguments made on behalf of the defense, and it seemed to me, gentlemen, that after they were concluded, the case had been relieved of all serious difficulty, if any had existed before. If I understand this case at all, it is practically a plea of guilty upon the facts here. There is actually, in substance, when you come to analyze it, no defense made. Of course it is all very well to abuse Captain Hudson. I just now looked over my notes of the speech of the counsel who opened the case, Brother Owens, and it was nothing but abuse of Hudson. He denounces Hudson and abuses Hudson for this thing and that thing and the other thing.

Now, there was never any idea of pleasing those gentlemen when Mr. Hudson was put upon the witness stand. He was not put there with the idea that what he would say would be agreeable to the defense. That was not the theory on which he was called; and, therefore, it is not at all surprising that his counsel should denounce Hudson. That is what they are here for. It would be useless to have them unless they did that. But the court has said to you, gentlemen, that if you believe his statement is true, your verdict must be guilty in this case, without regard to whether you think Hudson is a good man or a bad man. He is not on trial.

Now, is his statement true? Why, it seems to me, gentlemen of the jury, when you come to analyze this testimony, there is hardly any question on that subject.

Look at it. In the first place, if the old man is lying he is the most skillful liar that ever breathed; because his whole statement was direct, straightforward, without the slightest swerving or equivocation—as much so as any that I ever heard from the lips of mortal man. He tells you the whole story without attempting to smooth anything over or palliate it in the slightest degree. He tells you the simple facts. And I want to call your attention to his statements now, just in order that you may test every one that he makes by other considerations, and see if they are not borne out—see if every statement he makes is not either admitted by the other side to be true, now that the whole thing is at an end, or else is corroborated wherever there is an possibility of subjecting it to the test of corroboration.

Let us see. How does he start out?

He starts out by saying, in the first place, that he had been an old filibusterer. He had been engaged in this business before. He makes no concealment of that fact. He does not pretend, as Gen. Johnson seems to imagine, to have

ever done any of these things out of love and affection for Cuba. On the contrary, he tells you frankly that he does not think this is a popular uprising in Cuba at all. That is a question with reference to which I have no information. Opinions differ greatly on that subject. A great many people in this country most earnestly and conscientiously believe that it is a genuine and *bona fide* effort on the part of the great mass of the people of Cuba to recover or to secure their proper rights and liberty; that they are grievously down-trodden and oppressed by Spain, and that they are struggling, just as the American patriots of 1776 struggled, for their right of constitutional self-government.

The people who believe that are certainly perfectly well entitled to their opinion. It is a matter with reference to which it is very difficult to secure accurate knowedge. Sometimes I think you cannot believe anything you hear from Cuba upon either side, there are so many lies in the air.

On the other side, gentlemen, there are a great many people, also, among whom are people who have had the best possible means of information, who entertain the belief that this, as Captain Hudson says, is not a popular uprising; that there is no genuine revolution to it; and that it is largely, as far as the promoters of it are concerned, a mere money-making business; that they can get hundreds and thousands and hundreds of thousands of dollars on the plea of sympathy with Cuba from the poor cigarmakers and the Cuban sympathizers all through the United States, and it enables a lot of very nice gentlemen like Senor Estrada Palma and Messrs. Benjamin, Guerra, and a lot of them in New York calling themselves the Cuban Junta to live in fine style and fare sumptuously every day at the expense of these poor cigarmakers and Cuban sympathizers, and the most of the money sticks there, and never gets to Cuba at all. Some people believe that they don't do enough fighting in a whole year to keep themselves warm. Why, there is no real war there, some people think. If I am not mistaken, I read in a paper where Gen. Bradley Johnson said he could go through the island from one end to the other with the Fifth Regiment, and clean out the whole of them, Spaniards, Cubans, and all.

Mr. JOHNSON. I could, to-morrow.

Mr. MARBURY. I believe you could, General. I do not believe there has been as much fighting since that war began in Cuba, two or three years ago—I do not believe there has been as much genuine, *bona fide* fighting in that time as General Johnson used to do every day between 1860 and 1865—I really don't. But that is a question which we cannot decide. Some people think the whole business is a sham; that when you read accounts of "battles" which last hour after hour, and hundreds of men are engaged, and then wind up by saying there was one man killed and three mules wounded, or something like that, that is not real war at all, and

that this money that is being sent down there is not sent there for the real purpose of carrying on any real, genuine war; that the whole business is a bloody sham. That is what some people think. They are entitled to their opinion, too. It is not for me to tell you which I believe to be correct. I entertain very decided convictions; but that is not the question for this jury.

I say, then, gentlemen of the jury, that Captain Hudson's position is this—not that he had been a sympathizer with Cuba or cared anything about the Cuban cause, but because he was a lover of adventure; because he is just a natural-born pirate, that is about it—he was a bold and skillful navigator; he put his courage and his brain, and his training and his experience, at the disposal of the Cuban Junta for so much money, just like Captain Dugald Dolgetty, who drew his sword and fought for any cause or country that employed him.

But this man, whatever else he may lack, had one thing which both the Cuban and Spanish armies, so far as we can judge, lack in this case, and that is genuine, leonine courage. That he has; any man can see it shining from his steel-gray eye every moment he speaks. He went into their service for pay, like a soldier of fortune in the ancient days, and as long as they kept their contract; as long as they stood to their word with him, he stood to his word with them, and he braved the dangers of the sea and the shore for them; he took his life in his hand and conducted his expeditions with signal success and ability. He was under no ties of blood. There never was any kinship between him and the sunburned races of that ever-faithful isle. There were no ties of affection between him and that horde of yellow and black men that he took on shore at Pine Key, and he did not care anything for them—nine-tenths of them were wooly-haired Africans, so far as this testimony discloses. The captain does not pretend to have cared anything about them at all. This was all a pure business matter with him. He owed them nothing except his service; he owed them that no longer than they performed their obligations to him, and when they failed in that, they released him of all obligations, legal or moral.

When they left him to take care of himself, exposed him to the daily risk of capture and imprisonment, he did take care of himself in the best way he could, the only way he could, as any man, who had his wife and children at home, would have done under the circumstances. That is all there is about Captain Hudson. He testifies, as I say, that he had gone on these expeditions before; that Dr. Luis knew it; that Gen. Roloff knew it; they had known of his expedition in the "Morning Star;" they had known of the filibustering expedition which he conducted in the ship "Hornet" in 1868 or 1870; they knew the temper of the man; they knew his quality; they wanted him again for similar services; they wrote a letter—Luis wrote a letter to Smith, and asked Smith if Captain

Hudson was still in town, and if he was, to find out whether he would conduct another "party."

What kind of a party, gentlemen? Can there be any question as to the kind of party he referred to? Can there be any doubt that he meant a filibustering party, a military expedition, a body of men who were to be carried from these shores to those of Cuba to make war against the Spanish? That was the kind of party which he conducted before. That was the kind of party which he had carried over in the "Hornet." That was the kind of party which Luis and Roloff all knew of, and, therefore, when they wrote to inquire whether he would conduct another party, it show beyond controversy that they wanted him to conduct just such a party as he is charged with having conducted, as they are charged with conspiring to have conducted, in this case. There is no question, no reasonable doubt, on that subject, as it seems to me.

Then his next statement is, as I remembered it, that they met shortly after that in his boatmaker's office (Smith's) in New York; that Luis was present and Smith was present, and it was then and there distinctly agreed and understood between them that the very thing which we are investigating here should be done. That is where the conspiracy—which is nothing, after all, but an agreement to do a thing—originated, right in that boatbuilder's shop. They there conspired and agreed together to do this very thing. The agreement was that Captain Hudson should come here to Baltimore and purchase this vessel; in the first place, they were to find a good vessel; and he went out and hunted around among the shipbrokers' shops and found Holmes, and Holmes told him of the "Woodall," and Holmes testifies himself that he expected to purchase the "Woodall" before he came to Baltimore. First, however, he came to Baltimore to examine the "Woodall," and examined her machinery, and finding her all right, went back to New York, and *Luis gave him the money with which to buy this vessel.*

Now, that is what constituted the overt act, when this vessel was purchased, and the provisions were purchased. That is what constitutes the overt act which makes the conspiracy complete, and makes liable all the other parties who were in the conspiracy—that is to say, the purchase of the vessel, or the purchase of the provisions for the vessel, because that constitutes the preparing and procuring of the means of carrying on a military expedition.

Of course, a ship is a very necessary means for a military expedition which has to be conducted by sea, and provisions are equally necessary for the expedition, for the ship; and all the people who have agreed together to provide a ship for the purpose of carrying out that military expedition, and one of them has actually done the thing, are guilty of a conspiracy.

There is nothing very complicated about it, after all; it is just as simple a matter as it can be.

Captain Hudson, after having purchased this ship, proceeded to procure the necessary provisions for her. That is what he says. Is not that true? Does anybody deny that? It does not rest upon his testimony alone. You have Mr. Claridge, of Loud (?) & Claridge, coming here and corroborating him fully. He says he sold him these very provisions, these very stores for this very vessel; that he cleared the ship for him. You do not have to depend on Captain Hudson for this item. Counsel cannot come here and say, "Gentlemen, you can't convict this man because you have got no testimony except that of Captain Hudson." And if we had no testimony except Captain Hudson's, it does not seem to me, if they offered none to contradict him, that they could come here and ask you, on your oaths, which require you to give a verdict according to the evidence, to render a verdict of "Not guilty."

But this does not rest on the testimony of Captain Hudson alone. And on every point where Captain Hudson's testimony comes in, compare it with any outside fact or any outside, independent witness and you will find that he is corroborated instead of being contradicted. When he says that he bought the provisions for this vessel, he is corroborated by Mr. Claridge. That is the first thing. When he says he got the money from Luis, is there any controversy about that? Certainly he got it from somebody. He says that they furnished the money—that the very defendant here, Luis, gave him the money. Is there any denial of that? Do you doubt that he speaks the truth when he says that?

He says that Luis and Roloff came here and registered under these false names of Luccas and of C. Miller. Is there any dispute about that being a true statement? Does not the register of the hotel corroborate that? That is not denied. Nobody denies it. Plenty of people could if it were not so; but they don't. No witness whatever is called to deny it. What right have they got to ask you to say that it is not true? You cannot blow testimony out of the way just by holloing at it; you cannot drive testimony away by shouting against it; there is the proof; there is the register; there are the facts. He registers as Luccas. But you say, "Nobody but Hudson says that." Well, there is the register. Gentlemen of the jury, not only is that so, but here are the letters. Here comes letter after letter in his handwriting. There is no controversy about these all being in Luis' handwriting, no dispute about that. Everybody admits that. That is testified to by Hudson. Did he not tell the truth when he said that? Who can doubt it? How easy it would have been, if Captain Hudson had not been telling the truth to have produced scores of witnesses who were familiar with Dr. Luis' handwriting, to swear to the jury that these half dozen letters which have been produced here are not in his handwriting. Of course the only reason they were not produced was that they could not be produced; there was no such wit-

nesses existing. It is his handwriting, without controversy. These letters, which you have heard read over and over, are the letters which Luis wrote to Captain Hudson after he got to the end of the voyage, down at New Orleans. You remember that he wrote down there a number of letters, which were read to you in the early part of the trial; and he signs himself as J. T. Luccas, and John Luccas, and uses that false designation each time, just exactly as he did when he registered at the hotel; and therein the captain's story is corroborated; it is proven to be true in these important respects.

Captain Hudson also testifies that every night that they met together there, he reported to them, to Roloff and Luis, at this hotel; and there is no controversy about that. There is no doubt about that being the fact. He did. All that is uncontradicted evidence in the case. He testifies that they knew what provisions he was getting, and the character of them, and furnished him the money with which to get them, and all that. Nobody contradicts that. My friends say, "Only Captain Hudson says that." Gentlemen of the jury, I supposed we were going to have some little fight over this; but what I want to call your attention to right now is this: That not only are those things, so far as I have traced this story, corroborated in every point by other witnesses, but they are so strongly corroborated that the senior counsel for the defense, when he took his stand before this jury, had to admit that they were true!

Now, let us understand that. It may be that you gentlemen did not perceive it exactly, because it ought to shorten your deliberations over this case a great deal. General Bradley Johnson stands before you and admits that every word of the testimony of Captain Hudson, so far as I have rehearsed it, is true. He admits that they did meet together in New York; that they did agree to have this vessel purchased; that they did give this money to Captain Hudson with which to buy, and that he did come on here and buy the boat; that he did buy the provisions; that he did report to them every night at Miller's Hotel, at the ——— Hotel; that they were in constant consultation. And he does not dispute the fact that all during this time, down on this bare, sandy key in Florida, were these 150 men with arms in their hands, ready for the expedition to Florida. The only thing that he says is: "Well, but Luis didn't know;" he asks you to find that that was so; that Luis did not know that this was a military expedition; he was not aware of the character of the expedition that was going to be conducted to Cuba. He knew that there was going to be an expedition conducted; he knew that the vessel was being provisioned for an expedition; he knew that the men were all down there; and, although those men were there, fully armed and equipped for a military object; and, although the leader of it, Captain-General Roloff, the general and commander of this military body, was in nightly consultation with him and discussing the whole subject of the expedition, he asks

this jury to believe that he did not know what the nature of the expedition was to be.

Well, gentlemen of the jury, with great respect, it does seem to me that if that came from a different and independent source, and were not excusable on the ground of the zeal of counsel, you would say that it was an insult to your intelligence to ask you to act upon any such theory as that. I say the case stands before you with practically a plea of "Guilty," and there is nothing on earth but an appeal to sympathy that is relied on for the acquittal of this man.

Let us go a little further in the matter. How does a man generally do after he has committed a crime? People know the law perfectly well; we may be quite sure that Dr. Luis is thoroughly versed in this question of international law. He knows precisely what constitutes and what does not constitute a violation of the international code of neutrality laws. He knows that. He knows perfectly well what a military expedition is and what it is not. He knows when he is within the law and when he is not within the law; possibly they had counsel advising them as to all that; and if this defendant here were conscious and aware that he had violated no law of the United States, you may be sure that in his correspondence he would not manifest any fear of the consequences.

Let us look at that. Now, the very first letter he writes after he gets back to New York is the letter of August 23rd, 1895, in which he says:

"NEW YORK, August 23, '95.

"MY DEAR CAPTAIN:

"I arrived yesterday very tired after being very sic in my way up. I have seen my people yesterday and to-day.

"I think I will be successful in fixing everything all right. I will know better to-morrow morning and will write to you again.

"Just keep very quiet and try as much as you can that the money you have to ask to pay everything will be as little as possible, and will be much better if you ask it by letter, explaining all."

Gentlemen, don't you see that this man——

Mr. OWENS. Read it all.

Mr. MARBURY. Well, if it is very important, I will.

Mr. OWENS. Yes; go ahead.

Mr. MARBURY. I may read a great deal more than Mr. Owens wants to hear, though, gentlemen.

"I will keep you well posted—

"Don't forget to send my letters—

"Do not see that man as I don't think we will sell—

"My regards to the engineer—

"Yours truly,

"JOHN LUCCAS.

"596 Columbus Ave."

This is the one, however, which my brother Owens will, of course, delight in particularly. Let me read it for his especial benefit:

"NEW YORK, August 23, '95.

"MY DEAR CAPTAIN:——"

Mr. OWENS. That was read before.

Mr. MARBURY. We did not have a chance to explain it before, though:

"We have every reason to believe that the 'saucy,' as you call her"——

That was the ship, the "Woodall"——

"Is under suspicion; and as matters are now in a very important state, so that increased care must be exercised, for the present we do not know whether it will be best to wait until the cloud blows away, or sell this and get another in its place."

Under suspicion! Of what? According to their theory, of *not* having violated the law! According to our theory, under suspicion of having violated the law. That is what it means, according to our judgment, gentlemen of the jury. Of course you are the judges as to which of us is apt to be right.

"Of course, we understand that another may have to be put into better condition"——

That means another ship, I suppose——

"To compare with this, but safety is now the principal object."

Safety from what? Can you imagine a man who has not violated any law talking that way?

"Under the circumstances, you will see that all repairs and improvements should immediately cease until we have decided exact what to do. In case we sell we will, of course, want a new one, and you might keep your eyes open. I send you 500 dollars to-day and will send you soon the balance. Of course you will, under the circumstances, keep as few of crew as possible. I will look here that you are posted as to all that may come up, and will write to you as soon as there is anything new.

"Yours truly,

"JOHN LUCCAS."

Then there is a copy of the letter of Captain Hudson which he wrote to Luis, in which he says this:

"SEPTEMBER 5TH, 1895.

"MY DEAR DOCTOR:

"I received your letter of the 1st inst. to-day and contents noted. The 500 dollar check was returned, as no doubt you will find out before this reaches you; so the next time you send a remittance, you had better send it to my credit. The machine man is getting terribly impatient at the delay in paying his bill and hints at 'libelling' the vessel; in such case, the expense will be increased

considerable, and besides that, it will injure *Cuban credit* for all time"——

Injure Cuban credit!

"For all time to come, as none will do a hand's turn unless cash is deposited beforehand; and, indeed, I have a hard time trying to explain the delay, and have been told to my face that they would neither take my word nor that of my 'backers;' that is just about the situation now, so you may judge what I have to contend against. Besides all this, I will want some money very soon to meet current expenses, and the sooner I receive it the better; for us, you know, it is pay out all the time."

Then he writes about another matter, about his wife not receiving the money which it was agreed she should get, and at the end he says:

"As you say, I read about the Wilmington affair—'the Philadelphia failure'—and that following on the heels of the 'G. W. Childs' and other failures, should teach the 'junta' that there is one individual in their service who does not make any blunders; it is not every captain that understands this business or who cares to undertake the risk, so my friend,

"Wishing for your welfare, I still remain your most obedient.

"Respectfully,

"CAPTAIN J. M. HUDSON,

"Str. 'James Woodall.'

"P. S.—I prefer that you take the money yourself to 117 Clarkson street, Flatbush."

Now, gentlemen of the jury, it comes down to this; there you have the thing in black and white. Besides that, you have the "official letter," written on the official paper, to Captain Hudson, in the handwriting of Luis—written on the official paper of the Cuban Revolutionary Party—the Junta, as they call it—in New York, all in black and white. I say the whole question is, can these things be? Can a lot of people involve us in war by doing things of that sort? It is a very serious question. You know that the exclusive right to declare war has been vested in the Congress of the United States. They abuse the administration a great deal. Our friend, General Johnson, did not think much of the past administration, and I don't know what he thinks of the present one; but his (?) newspaper has said: "Declare war by cable at once against Spain." Well, the United States has got a right to do that. Congress, though, is the only body that is vested by law with the ability to declare war. The involving of a country in war in these days is a very serious business—a very serious business. The difference between war now and what it was fifty years ago is about the difference between a fight between two boys five years of age, and a fight between those same two boys when they get to be twenty-five, and weigh 180 pounds apiece, and have been trained for about six weeks in Ne-

vada. Now, when Mr. Fitzsimmons and Mr. Corbett were about five years old, they could fight all day long—that is to say, they could fight off and on all day long—and when the sun went down, there wouldn't be anybody hurt, or if he was, it would be nothing more than a scratch on the face, or a bloody nose. They could continue hositilities day after day until they got big enough to hurt one another.

War in old times, before modern arms were invented, lasted a long while—that is to say, you hear of the Seven Years' War in Europe, and even of the Thirty Years' War. Our Revolutionary War lasted seven years. But they don't last that long now. The Franco-Prussian war ended in a few months. The introduction of railroads, by which men can be carried, enormous bodies of troops may be transported with great rapidity and concentrated in a few hours over hundreds of miles at a certain point—the invention of improved arms, where a man can now fire as many shots in a minute, as, fifty years ago, he could have fired in two or three hours, and where the effective range of guns has changed from half a mile to two or three miles, and where you can use a modern rifle and kill a man two or three miles away—those things have changed war. When two first class nations go to war now, it is liable to be ten times worse than it was even in 1870 between France and Germany. It has always seemed to me that the way in which the Iron Chancellor sent those serried ranks of armed troops right at the heart of the French Republic was like the spring of a tiger. The thing was all over in a few months; they were crushed—destroyed. The heel of Germany was on the neck of France. The whole body politic was paralyzed. A war between those two nations now is liable to result in almost the destruction of either one or the other; it could not last more than a few weeks.

Why, there would have been a hundred wars in the last twenty years in Europe if it had not been for the improvement in arms. It is so much more serious a matter that they cannot afford to go to war—those people over there now cannot afford to go to war; and the reason why these things which so much arouse anger on this side of the ocean are allowed to continue is because each one is afraid—England, for instance, is afraid that if she steps in and stops the massacres in Crete, or the oppressions of the Turks, it will bring on a general war with the other powers; and a general war literally means hell in these days. Now, gentlemen of the jury, Congress has got the right to involve us in the hell of war if it sees fit, but a lot of irresponsible Cuban filibusterers have not.

This is the case here. That is what they do. They come here and organize right in the metropolis of America—right in New York City—openly, with their regular letter-heads printed there, and send their emissaries about the country, and do acts which are calculated to involve us in war with Spain, and then when they are

arrested and brought into the province of the courts, through their counsel, they go before the jury and appeal to them to sanction that character of conduct, on the plea that they are fighting for Cuban liberty. I don't believe they are fighting for Cuban liberty—not a bit of it.

GEN. JOHNSON. There is where I differ with you; I think they are.

Mr. MARBURY. Well, gentlemen of the jury, every man is entitled, as I said some little while ago, to his own opinion on the subject. There is no fight here for Cuban liberty. We have a right—we have a clear, plain duty to perform, it seems to me—in this matter. If we are such sympathizers with Cuban liberty, and if we think Cuba ought to be aided and the Cuban—whichever side it may be—ought to be aided as against Spain, we ought to act like a manly people—go boldly forward and say: "We will champion the cause of Cuba libre; we will champion the cause of Cuba."

GEN. JOHNSON. I think you ought to.

Mr. MARBURY. "And we will fight you; we will declare war against Spain. We have a right to do it if we see fit. If we choose to incur the expense, the danger and the risk of a declaration of war against Spain, we have a right to do it. We can do it, I mean, and if we are going to help Cuba, if we are going to fight Spain, we ought to come out into the open, and do it as the manly people that we have always claimed to be. But we haven't got that right, and I appeal to you to say as American men, with the sense of fair play to which we are so much accustomed, to support it, we haven't got a right, pretending to be neutral, refusing to declare war, enjoying the benefits of neutrality, to permit a secret, underhand system of attack, to be carried on under our very noses, and make no effort to prevent it. That is not the way for an honest people to do. It is not the kind of thing we can afford to do; it is not in accord with the honor of the American name; it won't reflect any credit on us in the eyes of the rest of mankind if we do it,

That is exactly what they are doing here. We are asked to say that we will not enforce our own laws, that we will not prohibit people from organizing military expeditions from our shores, carried on against the territory of the Government of Spain, and if our own laws are to be used for that purpose, we will not enforce them.

Gentlemen of the jury, if you or I were to be the judges as to the wisdom of those laws, we could find no doubt as to how our judgment should be rendered, but we are not; and yet it is worth while, in order to strengthen one in his performance of a disagreeable duty—it may be well for us, in view of the desirability of having a good precedent for our action, to look exactly at where these laws come from. The first neutrality law, the first law which was ever enacted for the purpose of prohibiting enterprises of this kind, came straight from the pen of George Washington; that is to say it came from his recommendations in one of his first messages which I have

here in the printed volume, in his address to Congress on December 3, 1793, in which he says, in speaking of the war which was going on in Europe at the time: "When individuals shall, within the United States, array themselves in hostility against any of the powers at war, or enter upon any military expeditions or enterprises, within the jurisdiction of the United States, or usurp and exercise judicial authority within the United States, or where the penalties on violations of the law of nations may have been distinctly marked, or are inadequate—these offenses cannot receive too early and close an attention, and require prompt and decisive remedies."

And it was in pursuance of his recommendation contained in that message that Congress passed the act, and proclamation after proclamation issued from him enjoining upon the officers of the Government, and especially upon the attorneys for the United States in the various districts, the order to enforce that law, and everytime that occasion has arisen since that time, the Presidents of this country have done the same thing, and the President just retired, in issuing his proclamation, which was read to the jury this morning, was simply walking in the footsteps of the Father of his country, and it does not become us, it seems to me, with great respect, to set up our judgment as to the wisdom of those laws against such authority as that.

I may illustrate it just a little more, and bring the question closely home to you. Suppose that we got into a war with Spain, as we may possibly before this thing is over; that these people got us into a war with Spain. Now, see how the rule would work then; how hard in Bermuda. Here, within a few hours of our shore, is the island of Bermuda, which belongs to Great Britain. What would you think if the Spaniards began organizing military expeditions on the island of Bermuda to sail against the ports of the United States? What would you think of that? Wouldn't you say to Spain, "Why, you must stop that; you must stop these people from doing that;" she could simply have them arrested for violation of her neutrality law.

COURT. You mean England.

Mr. MARBURY. I mean England, your honor and gentlemen of the jury. England has neutrality laws just like ours, and she would. We would say to England, you must stop. Well, how would they stop that? English law is very much like our law; the same methods of procedure in substance prevail. You cannot send an officer right out and take a man and throw him in prison, and punish him without trial in England any more than you can in this country. The jury system is an inheritance or ours from Great Britain. It started far back beyond the memory of man, and it prevails to-day in England as it does here. What would be the

course of the English Crown in a case of that kind? They would have a warrant issued for the arrest of this fellow, whoever he was, that organized this expedition, they would have him indicted by the grand jury in Bermuda, they would have him tried before an English jury, and they would have him hung for violating the neutrality laws of Great Britain, in carrying on a military expedition against the United States, a peaceful nation, a nation with whom England was at peace at that time, wouldn't they? But suppose an English jury would refuse upon clear proof to punish a man, wouldn't we become pretty tired after a while? Just think of it; suppose, after the arrest took place, expedition after expedition was landed on the coast of South Carolina, or Florida or Maryland, and men after men were arrested in Bermuda, and the English juries refused to convict them, because they sympathized with Spain as against the United States, wouldn't we get pretty tired of it, and wouldn't we say, "Look here, if you can't give us redress, if you can't enforce your own laws, we will take care of ourselves, we will have a hack at John Bull." It would bring on war just as certain as we sit here, just as inevitable. And while, of course, you must give your verdict according to what you believe to be the truth, but when counsel appeal to you to allow your sympathies for the Cuban cause to influence your verdict in this case, they are asking you to do a thing which may be fraught with consequences more serious than you may dream of; they are asking you to move a little step towards a state which would result in war.

This is a serious business, gentlemen of the jury. It is not a mere perfunctory duty which the court performs when it calls your attention to the serious character of this business, and I say in conclusion that it does seem to me that the evidence in this is made as clear as anything can make the charge. You have it stripped practically of every defense, except what seems to me to be the utterly, almost, unintelligible theory that Mr. Luis did not know what he was about at the time when he was planning and designing and putting off and equipping, and setting on foot this expedition, and providing the means for it, that he did not know what kind of an expedition it was, notwithstanding the fact as to the character of the expedition has been proved to you by witness after witness.

Let me say one word more, just there; I want to say a word to clear this case of some foolishness which seems to me ought not to be in it. Comment was made on the fact that detectives have been paid and witnesses have been paid their expenses while they were attending this trial. Now, gentlemen of the jury I have never seen a man prosecuted in my life that he did not complain of that. You pay several hundred thousand dollars a year in Baltimore City for detectives and policemen to do that very thing; that is what you are taxed for, and the principal thing you are taxed for. If you

are going to acquit people and refuse to enforce the law because detectives are used to ferret out the evidences and discover the evidences of crime, you might just as well repeal all your criminal laws at once.

Mr. OWENS. You don't mean to say that the United States Government is paying these men's expenses while they are waiting here?

Mr. MARBURY. I am talking about the usual methods employed in the detection of crime. What have we to do with the methods employed to detect crime? What do we care about it; what has that to do with the case? Does anybody say that Lockney does not tell the truth; that what he said as to the character of that expedition is not true? If it is true, what difference does it make wheth r he is paid by the detectives or not during the time that he is not e ble to make a living.

Nowa if you were not going to be allowed to pay the expenses of a witne,ss like that while he was kept here six or eight weeks, then you would simply have to let him go on his voyage, and he would not be here, and could violate every law on our statute books every day; unless your witnesses happen to be men of independent means, who could afford to wait without doing any work, and stay away from their ordinary avocations until the case could be tried.

Now, I mean you are perfectly entitled to give all the weight that you think it may be entitled to, to the fact that the expenses of the witnesses are paid, and that they are kept here at the expense of the agency, but that does not touch the question of issue in this case; that does not relieve you of the obligation aud the absolute obligation, to give a verdict according to the facts of the case which is now nearly in your hands; every single fact which was testified to by these witnesses; these witnesses who are brought here by the detective agency. Every single fact is now admitted by General Johnson to be true. What is the use under these circumstances of criticising the witnesses because of their affiliations with detectives, except for the purpose of operating on the feelings and prejudices, and not appealing to the reason of the jury?

I don't care what the character of the witnesses may be; I don't care what motive may have influenced them in coming here to testify, if counsel for the defense get up here and confess and admit expressly before the jury, that what the fellows have said is true; if that is the case, why what have you got to do with the question of detectives or anything of that kind. It saves us the trouble of considering those questions; and I say to you, gentlemen, that that is all there is in the case; as far as the evidence is concerned, it does seem to me to be a plain case, and we ask you, with great respect to your better judgment to do what seems to be your plain duty.

GEN. JOHNSON. While I admit all the facts testified of the obtain-

ing and the purchase of the vessel, I expressly denied every fact that tended to prove that this man had any knowledge of the expedition.

Mr. MARBURY. I think I have made that clear to the jury.

GEN. JOHNSON. And all the facts do not amount to anything unless you believe he had knowledge of that expedition.

Mr. MARBURY. Very well, I will leave that to the jury.

(And thereupon the jury retired to consider of their verdict.)

In the District Court of the United States, in and for the District of Maryland.

UNITED STATES OF AMERICA
vs.
J. J. LUIS.

Hearing of motion for a new trial.

Counsel present:

Messrs. BRADLEY S. JOHNSON, ALBERT S. J. OWENS, and LEON J. BENOIT for the defendant.

Messrs. WM. L. MARBURY and ——— LEE for the Government.

The COURT. Proceed gentlemen.

Mr. OWENS. May it please your honor, in this case, we have filed a motion for a new trial, containing three reasons for it, and also in the 4th clause, "For other reasons to be shown at the hearing," and General Johnson wishes to make a specific allegation with referenc to it.

The counsel for the traverser in this case has filed the following motion for a new trial:

In the District Court of the United States, in and for the District of Maryland.

UNITED STATES OF AMERICA
vs.
J. J. LUIS.

To the honorable, the judge of said court:

The defendant in the above cause by his counsel moves the court to grant him a new trial upon the issues joined in said cause for the following reasons:

(1) Because the verdict is against the evidence.

(2) Because the verdict is against the weight of the evidence.

(3) Because there is no evidence in this case tending to show that the alleged military expedition set for and started from the United States of America.

(4) And for other reasons to be shown at the hearing of this motion.

(5) And because the jury list used for this term of court was not drawn in accordance with law, in that it was not drawn by a jury commissioner of opposing politics to the clerk of this court, Mr. Lewis E. Bailey, the commissioner for drawing the jury, being a well known and pronounced Republican; and Mr. James W. Chew, the clerk of this court, who, with Mr. Bailey, drew the jury list, is not a Democrat; and because there were not three hundred names in the jury-box at the time the jury list was drawn therefrom.

(6) And because the assistant district attorney, in his summing up to the jury, alluded to the failure of the defendant to testify in his own behalf.

(7) And because the court refused to allow counsel for the defense to ask each juror, prior to his being sworn, the following questions:

1st. Do you know any of the Spanish consuls in this country, or the Spanish Minister?

2nd. Have you ever had any business with the Pinkerton Detective Agency, and do you know any Pinkerton detective?

3rd. Have you ever been in Spain or Cuba?

4th. Have you ever had any business with Spain or Cuba; and, if so, of what nature?

5th. Have you any conscientious scruples about the prosecution of war?

I will call your honor's attention to the statute, as noted in Desty's Federal Proceedure:

"Jurors to serve in the courts of the United States, in each State, respectively, shall have the same qualifications subject to the provisions hereinafter contained, and be entitled to the same exemptions as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such State court, so far as such mode may be practicable by the courts of the United States, or the officers thereof; and for this purpose the said courts may, by rule or order, conform the designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the State courts from time to time in force in such States." "And that" (Section 6000) "all such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing at the time of each drawing the names of not less than 300 persons possessing the qualifications prescribed in Section 800 of the Revised Statutes, which names shall have been placed therein by the clerk

of such court; and a commissioner, to be appointed by the judge thereof, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein."

It strikes me upon reading this statute, as I intended to say to your honor when I argued the motion to quash which we filed in this case, that the language of this statute is mandatory, and not directory. The language of this statute is that there shall be in that box the names of three hundred qualified jurors, and that they shall have been put in there by the persons authorized to put them there under the statute. Now as to the question of injury, I understand this statute to mean that a person accused of crime had a right to be tried by an impartial jury, and in order that there may be no doubt about the impartiality of that jury, he is guaranteed certain legal rights, and that legal right is that the statute which the wisdom of Congress has determined to be a guarantee of an impartial trial by a jury is strictly complied with. If then that statute is not complied with, there is no doubt in my mind that as a matter of law the person who has the right to that impartial trial has been injured in that he has been prevented from having a fair trial in the course provided by the statute.

Now, when we made the motion to quash—I want to refer your honor to the testimony in the case, in order that the whole matter may be fresh. The motion to quash was in this language:

"The traverser by counsel prays the court to quash the array of petit jurors selected to try this cause.

"First. Because the said jury was not drawn from a box containing at least three hundred names of not less than three hundred persons, possessing the qualifications prescribed by statute, which names were placed therein by the clerk of this court, and a commissioner appointed by the judge thereof, which commissioner was a citizen of good standing residing in the district in which the court is held, and is a well-known member of the principal political party in the district which the court is held, opposing that to which the clerk may belong.

"Second. Because the entire panel of jurors was not drawn at one time.

"Third. That at the time of the several drawings of the names of jurors from said box, there were not three hundred names in said box.

"By reason of which illegal selection of the names of persons placed in said box, and the whole panel not having been drawn at one drawing, or that three hundred names were not in the box at

one time, the right of this traverser to be tried by an impartial jury has been diminished, and he has been thereby injured."

Now, I will go on just here with a sufficient portion of the testimony to show exactly the scope of the motion that we file.

"The statute under which the jury is drawn in the United States Court, may it please your honor, is about this: The statute provides as follows:"

Then Mr. Marbury asks what statute it is; the court says, "You need not refer to the act;" what is the particular point; I am very familiar with the statute, your honor says.

"Mr. OWENS. The particular point is that in the first place, that the commissioner appointed by your honor is a well known member of the Republican Party. The clerk of this court does not affiliate with any party.

"COURT. I overrule that point; you need not go any further into that.

"Mr. OWENS. Well, sir; the other point is that the names of the persons who were put into this box were mostly put in there just after the death of Mr. McClintock, and that it is questionable whether or not there are in the box the names of three hundred living people, and we have a right to know that because the law says that the box shall have contained, at the time of drawing, three hundred persons, three hundred qualified persons.

"Now, for instance, as your honor very well recollects the fact that one of the jurymen that was sworn in the case was 81 years old; that was discovered after the drawing was made, and his name was stricken from the roll. Now, the commissioners have in their possession that copy, a list of the names of the people in that box, and we, therefore, have the right to know and ascertain from them whether or not that box contained, at the time of drawing, three hundred persons who were qualified to serve as jurors in this court. We are informed that a large number of them have died, and therefore, there may not have been that number there. We charge it with the intention of making the examination and taking the necessary proof which we are entitled to take in support of that motion; that is the point that we raise.

"COURT. That is overruled." To which, as your honor recollects, we reserved an exception.

Now, may it please your honor, if I am right as to the history of this act under which the law requires these safeguards that we claim we are entitled to have observed—it was passed in 1879 at the time of the celebrated Kuklux trial, and the object of the act was, there being at that time great political dissention, political discussion, and political trouble in the South, that no matter which side a man belonged to when he was accused of crime, that a member of one political party should put in the names of those people whom he knew were fair-minded, and that the member of the other

political party should put in the names of those whom he knew to be fair-minded, in order that when the whole panel was completed every possible opportunity had been exercised for the purpose of securing an unprejudiced and impartial jury.

Furthermore, in order that they might exclude even from these gentlemen the absolute selection of the jury, they were required to put and have in that box three hundred names of people they knew to be qualified; not three hundred names that contained old people; not three hundred names, some of whom were dead, some of whom were qualified and some disqualified; but three hundred names of people who as a matter of law and as a matter of fact would be an absolutely impartial lot of people from whom a jury might be drawn of an impartial nature.

In contemplation of law, those three hundred names are to be placed in that box at the time that the drawing is made, or just before the drawing is made. Why? Because there may be in the minds of the men who put the names in that box the knowledge of the fact that those men were qualified men at the time they were put in there. If your honor recalls the fact, the allegation is made here in open court—it was made by me here in open court—that that box has not been emptied since it was filled up after the death of Mr. McClintock, a period of time, as far as I can recall it, somewhere in the neighborhood of three years; that since that time there have been constantly drawn names from that box, and that the jury commissioner and clerk of the court have put into that box the same number of names all the time that have been drawn out. May it please your honor, there may not be in that box today three hundred names; and if there are three hundred slips of paper with three hundred names on, there may be in that box 20 or 30 or 40 people who may have died. If that is the case—we have been informed that it frequently occurred that men's names have been drawn out there who have died since they have been put in—if that be correct, we contend that we had a right to take the testimony to prove the allegation, and, as your honor denied that right, we think that is sufficient ground for a motion for a new trial. We were prepared to take it; we had the testimony within our grasp; we had it here almost within the possession of the court. Now, I take it that the act requires that when this jury is drawn there shall be a complete panel drawn at one time. I don't mean to say, may it please your honor, that the panel from which the jury is selected when it comes to be finally drawn shall be from the 24 men as provided by law, but that there must be one act of a perfect jury drawn, and when after that is done, your honor finds that after striking all the people that your honor may see fit, then your honor can fill it up from another drawing from the box; but the law presumes a complete jury drawn at one time only, to be acted upon by any action of the judge when he finds that by circumstances over which

he has no control, or over which the commissioners have had no control, that it is impossible to get the necessary array from which to strike that panel.

In this case, as your honor knows, there were nineteen names drawn at one time. If I recollect it properly, out of that 19, there were some three or four excused, or some disqualified.

COURT. I think there were 24 drawn at first.

Mr. OWENS. There may have been so many excused so as to reduce the number to 19.

COURT. I never drew less than 24 for the petty jury.

Mr. CHEW (the clerk). 24 were drawn.

COURT. There were for one reason or another enough excused to reduced it to 19, as you say.

Mr. OWENS. If, as a matter of fact, your honor drew 24 at first, or there were 24 drawn at first, and then if the box contained the requisite number of names, I appreciate the fact that that would be no objection; and, therefore, if your honor says there were 24 drawn at first, that second objection falls to the ground, but in no manner interferes with the original objection.

COURT. Of course the drawings are made in the presence of the court, and I have the judicial knowledge to that extent of what takes place; I am quite sure 24 names were drawn, and because of absence, of sickness, or some sufficient reason, I excused 5, and then I drew 5 more; and then there was a third drawing. I generally draw enough to fill up the panel to 24.

Mr. OWENS. Now, I want to call your honor's attention to Avitt against the State, in 76 Md., which I hold:

"We come now," says the court, in Avitt against the State, "to the first plea in abatement, and it presents a most important question." I will say with reference to that, that the usual way of challenging an array is by plea in abatement, but that a motion to quash the array is accepted as proper practice, though not artistic.

COURT. A plea in abatement would be where there were some defect in the grand jury.

Mr. OWEN. I think it is artistic pleading to file a plea in abatement in all cases, but a motion to quash is considered equally as efficacious.

"We come now to the first plea in abatement, and it presents a most important question.

"By Sec. 7 of Art. 51 of the Code, it is provided that: 'It shall be the duty of the judges of the circuit courts for each of the counties, . . . in the presence of such practicing members of the bar of said court as shall think proper to attend, notice of the time and place having been first given to said bar through the criers of said courts, to proceed to select from the lists last furnished by the clerks of the county commissioners and from the poll-books of the several election districts of said counties, that shall be returned and

filed in the clerk's office of said court, after any general election that may be last held previously to such selection, a panel to consist of the names of two hundred persons, . . . to be fairly and impartially selected, of the age aforesaid, by the said judge, with special reference to the intelligence, sobriety and integrity of such persons, and without the least reference to their political opinions. . . .' The plea alleges that the jurors drawn for the April term, 1892, of the circuit court for Allegheny County were not drawn as required by the statute, and that the presentment and indictment against the traverser were not found by a legally constituted grand jury. Upon this plea an issue was joined and a trial thereof was passed before the court, and the finding and judgment thereon were against the traverser. By the first bill of exceptions, it appears that Judge Hoffman, who was the only witness examined on this issue, testified that he had directed the crier to notify the members of the bar that on March 19th, 1892, he would proceed to draw the jury for the April term of court. That upon the day named 'he went to the clerk's office *with a list of two hundred names*; that said list had previously been made out by him *from names of persons that he knew*, and *from names that had been suggested to him by different persons*, in the different districts of the county, but was chiefly composed of names of persons that had previously been in the box, but had not been drawn out; that some of the names had been suggested by different members of the bar; that he announced that he was about to draw the jury; that if there were any objections to any of the names he would be glad to hear them; that *he then read from the list previously prepared by him*, which he regarded as a mere memorandum, the two hundred names; . . . that the names of the two hundred *were selected* from the list *previously* made by him; that no reference was at that time made to the poll books, or to the list furnished by the clerk of the county commissioners, except that a reference was made to the poll books to ascertain the correct spelling of one of the names, and to ascertain whether another person on said list was 25 years of age; . . . and that all of the two hundred names placed in the box appeared upon the poll books of the several election districts of Allegheny County, as were filed in the clerk's office of said court after the last general election held previously to said drawing, but some of said names did not appear upon the list of taxpayers filed by the clerk of the county commissioners.' From the list of names thus made up the jury was drawn, and the question we had to decide is whether this method of selecting a jury is a substantial compliance with the provisions of the statute just quoted. Coleridge, J., observed, according to Lord Denman, 'that all questions touching the formation of juries must be examined by the judges with very critical eyes.' O'Connell's Case, *supra*.

"This court has said, in Green *vs.* State, 59 Md. 123, that 'the general method prescribed for drawing juries is mandatory, and substantial compliance with the provisions thereof, in respect to the *selection* and *drawing* of jurors, is necessary to make the jury a legal one, and unless the *selections are made* by the judge, *in the manner pointed out by the statute*, exception at the proper time and in the proper way may be successfully taken to a jury improperly chosen and drawn; otherwise the statutory provisions would be wholly nugatory.' Now, the statute unequivocally prescribes that the two hundred names which are to be placed in the box, and from which the names of the 48 persons who are to form the grand and petit juries are to be drawn, shall, in the presence of such members of the bar as think fit to attend, be *selected* by the *judge* from the tax list and the poll books. The person who shall make the selection is the *judge*, and no one else; the selection is to be made publicly, in the presence of the members of the bar, if they attend, after notice, and the poll books and tax list are the two exclusive sources from which the judge can procure the names to be placed in the jury box. The selection must be made by him with special reference to the intelligence, sobriety and integrity of the persons chosen. After this has been done, he must sign a certificate that the 'list has been duly selected in conformity with and according to the spirit and intent of' the law. Prior to the act of 1867, Ch. 329, jurors were selected by the sheriffs of the counties, but that method was so open to abuse, and some sections of the State was so notoriously perverted for political and partisan purposes, that the General Assembly, by the act of 1867, radically changed the whole system. The judge was substituted for the sheriff to make the selections. The statute, if the occasion which prompted its passage be considered, never contemplated that in the discharge of this important and delicate duty the judge was to accept the selection made by others. It was the obvious design of the law to provide the most minute safeguards for the selection of intelligent, disinterested, and upright jurors. But its salutary policy might be utterly prostrated, if the judge, instead of himself making the selections, should merely adopt the lists privately furnished to him by persons who, without his knowledge, may be interested in securing the attendance of particular individuals to serve upon the jury. The names thus furnished him may be names upon the poll books or the tax lists, but they are not the names selected *by him* therefrom."

NOTE.—Mr. Owens continued to read from Avirett against State from the middle of page 535 to the end of the first paragraph on page 538.

I read that decision to your honor for the purpose of showing that one of the guaranteed rights that any person who is accused of crime shall have is that the jury impanelled to try him shall be a

jury drawn in conformity with the statute, which statute has thrown around that man all the safeguards that the wisdom of the law-makers can find for the purpose of giving him a fair and impartial trial. And if it should be said on the part of the Government here that there is no proof in this case, this man has been injured by the drawing of this jury, I take it that it is good law that any man who is denied a legal right is thereby denied the justice which the law says he is entitled to, and is thereby absolutely and unqualifiedly injured.

There are two decisions with reference to the matter in the federal court. I sent for them a moment ago and I will refer your honor to them.

COURT. Supreme Court decisions.

Mr. OWENS. No; one case is from the Circuit Court of Florida; if I remember right, the objection made there was simply because the jury were not drawn from the county in which the man lived.

COURT. I think the Supreme Court has passed upon the question of their being drawn at intervals; I think there is a case in either 154th U. S., or 146th U. S., in which that point was raised and disposed of.

Mr. OWENS. I am not going to argue that question any further, because your honor says you had judicial knowledge of the fact that the 24 jurymen were drawn. Of course, that disposes of that question.

Now, may it please your honor, as your honor remembers, we alleged in this motion to quash in absolute terms, the lack of the three hundred names in the jury box, and the fact that they were not put in there by persons who, under the law, are eligible to put them in there. I take it that, as we offered to adduce testimony to that effect, which we think we have a right to do, and which your honor thought we didn't have a right to do, that was a matter of fact, for the purpose of this motion for a new trial, and for the purpose of that motion upon a writ of error, if we should see fit to issue one, that as the case stands here to-day before your honor, your honor must conclude that this jury was not drawn by competent persons, and that the box from which these names were taken did not contain three hundred names of persons qualified to serve upon a jury. That, as we were denied the right to prove it, and as your honor simply overruled it, that then the facts alleged in that motion to quash must be, under this motion for a new trial, considered by your honor as absolutely true, and that your honor must consider that there were not in that box three hundred qualified names; that those names were not put there by anybody authorized to put them there; that this array from which we drew this jury was not a properly constituted array, and did not give us the rights that under the law we are entitled to, and that the jury was an illegally constituted jury, and that we are entitled to a new trial.

COURT. The grounds I overruled the motion on was the judicial action of the court; it was upon that ground, not a matter that takes place out of the knowledge of the court, but it is a matter that takes place under my own eyes, and it was upon that ground that I overruled.

Mr. OWENS. But, does your honor mean to say that your honor would say that, as a matter of absolute fact, there were in that jury box the names of three hundred persons qualified to serve as jurors at the time the drawing was made?

COURT. No, I could not say that, because, as has been suggested, some who have been put in may have become disqualified for various reasons; perhaps some of them may have died, but my understanding of the law is, that it is not mandatory, that it is directory, and that a *bona fide* intention and effort to comply with the law is a substantial compliance; that the names were put in there and that they were to the knowledge of the jury commissioners, qualified men when put in, that if the number is kept up, it is a box that contains 300 names in compliance with the statute. That is the view I always took.

Mr. OWENS. Our contention is that we had a right to take testimony as to whether they were there. As I said a moment ago, that those names—we are informed that the majority of the names put in that box were put in there just after the death, or, rather—just let me state it differently. At the death of Mr. McClintock, the box was filled up with a certain number of names, and that since that time, although there have been juries drawn, term after term, as the court required, the box has not been emptied, and that the Commissioners have contented themselves with putting in a number of names equal to the number they draw therefrom.

COURT. In point of fact there are sometimes four and sometimes three petit and grand juries drawn in the course of a year, so that there are from 150 to 200 names drawn out every year, and there are of course at least that number put in every year; so that, although it might possibly happen that some few names that were put in, say two years ago, or three years ago, if that was the date when the whole box was renewed, it would be only by chance that any could remain there that were there at the beginning; there are about 150 to 200 names a year drawn out.

Mr. OWENS. When did Mr. McClintock die?

Mr. CHEW (clerk). I can't state exactly.

COURT. I suppose it is about three years.

Mr. OWENS. The next objection to which I wish to call your honor's attention is, it is not in the order—in regular order; but I want to call your honor's attention now, as it happened in the course of the trial next to this matter. I call your honor's attention to—

"And because the court refused to allow counsel for the defense to ask each jurior, prior to his being sworn, the following questions:

"1st. Do you know any of the Spanish consuls in this country, or the Spanish Minister?

"2nd. Have you ever had any business with the Pinkerton Detective Agency, and do you know any Pinkerton detectives?

"3rd. Have you ever been in Spain or Cuba?

"4th. Have you ever had any business with Spain or Cuba; and, if so, of what nature?

"5th. Have you any conscienticus scruples about the prosecution of war."

I am not going to argue that question at great length, but want to state my reason for putting that in as a motion for a new trial. As your honor is aware, the statute guarantees to every person accused of crime the right to three peremptory challenges. He has also, as your honor knows, the right to as many challenges for favor as a juror upon his *voire dire*, or in any other manner we are able to bring to light the fact of his incompetency. Your honor permitted only this general question to be asked, and that was: "Do you know any reason why you cannot render a fair and impartial verdict?"

Now, in order that we might intelligently exercise the right to a peremptory challenge and a challenge for favor, it was necessary in this case that we might ascertain from the jurors as they presented themselves whether or not they were surrounded by, or affected by, any circumstances, any environments, may it please your honor, that would, in our opinion, then entitle us to the right of peremptory challenge, and in the opinion of the court, from their answers, entitle us to a successful challenge for favor.

Now, the chief witness for the Government, Captain Hudson, testified that before he entered suit in New York and before he appeared upon this witness stand as a witness for the Government, that he went to the Spanish consul, in the city of New York, and practically secured from him absolute immunity for the crime that he himself confessed he had been guilty of; that in addition to that every witness, with but one exception, who was brought here and put upon that stand, swore that a Pinkerton detective agent was paying each of them a weekly pay, and Captain Hudson swore he expected to be paid by the Spanish consul or somebody else for what he had done when he got out of this case.

Now, knowing that this case was surrounded by Spanish money and by Spanish power; that this case was hunted down and examined by Pinkerton detectives, it seems to me that in order to properly ascertain whether or not we could challenge a witness peremptorily or for favor, to show his meaning, the circumstances by which he was surrounded, before he came here as a juror; that that, with the subsequent evidence of the trial, all evidence that was brought here surrounding every one of these witnesses, the fact that they were in the pay of the Spanish Government, or employed by Pink-

erton detectives, that they got money weekly when they didn't work and were kept here month after month while waiting to testify, shows that the questions we wanted to propound to each one of these men were fair, and that we were denied the right to exercise the right of peremptory challenge which we are entitled to under the law.

Now, may it please your honor, the first reason we alleged for a new trial was this: "Because the verdict is against the evidence." The rulings of your honor, the granting of the prayers which your honor granted—so far as our prayers were concerned—of course we can have no objection; we think they are a fair statement of the law governing this case. We think that those prayers state beyond doubt a fact which your honor will agree with me, I think, is good law, that in order to convict the traverser of this crime of which the jury has found him guilty, that it must be proven beyond a reasonable doubt that the traverser knew the nature of this enterprise, and knew that he intended to violate the law at the time the alleged agreement was made, between all these parties. The testimony as to his knowledge comes primarily from Captain Hudson. Captain Hudson says that first this man sent for Smith, and asked Smith to find Captain Hudson, and get a boat; that Captain Hudson thereupon got $15,000 and came to Baltimore, and that a day or two after Mr. Luis came here; he says that when he came here he didn't know where he was going, but thought he was going over to the Spanish Main; he says he never knew from Luis where he was going and that he didn't know until he got out on the Chesapeake Bay, where Roloff intended to go; and when he was asked the point blank question, "Did Luis know that this enterprise was an unlawful enterprise that you were going upon, a military expedition," he says "I don't know that he did, but I believe he did." Now, there is the primary evidence, that your honor will admit would not be sufficient, beyond a reasonable doubt, to convict the accused; the mere fact that he didn't know, but he believes; now, after the whole testimony is in, they bring here a lot of letters to aid the weak case of the Government, and to prove knowledge on the part of Luis; what are those letters? They say this vessel is under suspicion; that Luis knew from the newspapers; those papers say he paid for all articles, and gave them extra pay; that, he had a right to do as any other man; that he came to New Orleans and made arrangements about the disposition and sale of the vessel; that, any man had a right to do if he had an interest in the vessel. And finding yet that there was no case against Luis, they bring Hudson up here for the purpose of testifying in reference to a letter which cannot be found or produced, of which no man knows anything, and there the word used is "my party;" can you find Captain Hudson, I want him to find another party.

All those things may have been perfectly legitimate and proper, and we contend from the evidence contained in those letters that there was no evidence beyond a reasonable doubt to convict the accused of the crime of which he here stands indicted.

The weight of the evidence, I take it, may please you honor; the weight of the evidence shows that he didn't know, and if he didn't know, why, manifestly, he could not be guilty of the crime.

Now, the sixth exception that we made is "because the assistant district attorney, in his summing up to the jury, alluded to the failure of the defendant to testify in his own behalf." The language used, your honor remembers; there was an exception made to that at the time, and this is the way the stenographer has it put down:

"Now, we will look at the evidence presented here for a few minutes. It seems to us that it is not necessary to dwell long on that. You gentlemen, if you have ever served on juries before, have had evidence presented to you on one side and on the other side; you have had contradictory evidence presented, and it has been always with the jury a struggle whether or not to believe the witnesses produced on behalf of the plaintiff, or whether or not to believe the witnesses produced on behalf of the defense; but here, gentlemen of the jury, you have the undisputed testimony of the Government, you have the witnesses we have produced here, and they have not so far put Dr. Luis himself on the stand"——

"Mr. BENOIT. Stop; I shall take an exception to that.

"COURT. You must not comment upon that, Mr. Lee, and the jury must not consider that comment."

I am perfectly well aware of the fact that there are a vast number of cases upon the question of how far a prosecuting attorney can go in his address to the jury.

COURT. There is one case in the Supreme Court on this very question.

Mr. OWENS. And there are many cases which go to the extent of saying that it is not a matter of reversal on appeal if the court shall tell the State's attorney he must stop that kind of talk, and also at the same time tell the jury they must not consider that question. This is the question, may it please your honor, which we bring to your honor here; not upon the ground of an appeal, but upon the ground of a motion for a new trial, and your honor can consider the question here is this, whether or not, in the opinion of your honor, the statements made by Mr. Lee here before that jury may have in any manner affected the mind of the jury and prevented them from from carefully and impartially considering the testimony in the case.

Now, I want to say right here that I have never tried a case in my life where the relations between opposing counsel were so pleasant and agreeable as they have been in this case; and I think your honor must have noticed there was no quarreling and no trouble of

any kind, all questions were fairly raised and discussed; but here, it seems to me, that when Mr. Lee called the attention of the jury to the fact that this man didn't go upon the stand, that no matter what your honor might say to the jury, the recalling the attention of their minds to that fact must have made them partial and kept them from being that impartial jury which, under the law and constitution, we have a right to be tried by. I want, as I say, to be distinctly understood, as making no unpleasant reference to my brother, Mr. Lee, but I think that unwittingly, and unintentionally, he did the traverser in this case, incalculable harm in making that reference to the jury; and I don't think your honor's telling them not to consider it would be sufficient to eradicate from their minds the expression made by Mr. Lee.

COURT. It would be too hard a rule because the counsel had inadvertently said something he ought not to have said, and that the consequence was immediately corrected, that the whole trial was to go for naught; that would be too hard a construction, and particularly, where the counsel for the traverser may make any appeal almost, and the court is always reluctant to stop such an appeal, and yet no exception of any kind can be taken to it.

Mr. OWENS. Now, here: "You must not comment upon that, Mr. Lee, and the jury most not consider that comment," and Mr. Lee says, "We stand here with our evidence before you undisputed." It is a substantial repetition of the same thing.

We are standing before your honor, on a motion for a new trial, a motion based upon such rights as we should have upon an appeal, and anything which in the opinion of your honor might have prevented us from having a verdict at the hands of an impartial jury.

COURT. To pass upon the last point made first: "Of course it is only within quite recent years that the traverser, the accused, the prisoner, in criminal cases, was allowed to testify in his own behalf at all; when the law was passed allowing him to testify, which was undoubtedly a wise and just law, as cases are tried nowadays before intelligent juries, and before juries who are competent and capable of discriminating, and of testing testimony by the bias of the witnesses, interest of the witnesses, and by the extent to which it is corroborated by the facts which are proved, it is a wise law; but it is soon seen that where a party accused had the right to testify, that if he didn't testify, if his conscience restrained him from going upon the stand, that that fact might be used to his prejudice that he didn't testify; so that the privilege of testifying might be many times a hurt, instead of a benefit, to the traverser, because he has a right to say nothing, and yet the prosecution must make out the crime, by affirmative testimony, beyond a reasonable doubt; so that no presumption shall arise against him if the traverser does not testify in his own behalf; it is the practice of the court not to

allow any comments on the fact that he does not testify. But in this case the assistant district attorney did inadvertently make a comment and he was immediately stopped and the jury was told they must not consider it. I think all possible harm was obliterated by the action of the court, and as has been suggested by the district attorney, I think the way in which the court spoke of it must have enured rather to his benefit than his detriment. At the same time it is impossible where there is testimony from which the jury may find the traverser guilty, which he fails to explain, and has the opportunity, I suppose it is impossible that that should not influence the minds of the jury—where they have testimony which they see, if it was explainable, might be explained, and which is not, but while the law says it shall not raise a presumption against him, it seems to me it is hardly possible that a jury, in considering whether a case has been proven, should not be to some extent influenced by the fact that here is testimony which, by competent testimony could be explained, but which is not explained. I do not think, therefore, that that is a ground for a writ of error, and I do not think that it worked to the disadvantage of the traverser.

The other point which has been made is that the evidence was not such as should have led the jury to believe, beyond a reasonable doubt, that this particular traverser knew of the illegal purpose of this expedition; that is to say, it is quite consistent with the testimony that he may have supposed that the vessel which was fitted out, practically he fitted out, was going to take an unarmed, unmilitary body of men, who were going over without any organization of any kind, and such a body as under the law as construed by the courts he might lawfully transport.

It seems to me it would have been very difficult, indeed, for the jury to have come to that conclusion upon the testimony; the evidence was that the money for the purchase was furnished by Dr. Luis; that he came on here to Baltimore himself and took part in all the directions which were made for fitting her out; that while ostensibly she was cleared for Progresso, in Yucatan, there could not be the slightest doubt in the minds of the jury, but that she was never intended to go there as the design of sending her out; that there was nothing there for her to do; there was no party there for her; the evidence was very conclusive that she should do just what was done with her; that she should go to this place on the coast of Florida; when she arrived there, there was the party she expected, and there is a strong presumption it was just the party she went there to get, because General Roloff, who was a confederate with Dr. Luis in sending her out; he found there just what he expected to get; there was the party he took over, and it seems to me there is the strongest presumption that that was the party he went to get and to transport. Under the instructions of the court,

the jury found it was a military expedition, and it seems to me the truth was ample to warrant that presumption; and it was exceedingly difficult to escape; so that I must overrule the motion so far as it is based on the ground that the verdict was against the testimony—indeed, I cannot see how an honest, fair jury could have found a different verdict from that testimony.

The other points with regard to the drawing of the jury I overruled at the time they were made, from my own knowledge of what takes place in the court; the drawing of the jury is done under my own eye, and therefore I have knowledge of the fact just how it is done, and my construction of that law is that a reasonable, fair, *bona fide* intention to comply with its provisions is sufficient; that it is not mandatory in the sense that the slightest deviation makes the whole drawing invalid, but that the intention of Congress was that a jury should be drawn substantially in the manner prescribed, and that jury was so drawn; I cannot see, as a matter of fact, that any possible injury came to this defendant from the manner in which this jury was drawn.

I think that all the points raised (though of course it is the duty of counsel to make them) are of the most technical kind, and they do not at all, to my mind, affect the fairness of the trial or the real merits of the question that was to be passed upon.

I therefore overrule the motion for a new trial.

I will then proceed to sentence the traverser.

This case is one in which the traverser has unquestionably done what he has done with a full knowledge of the law, and, I doubt not, because he has believed that it was his personal duty to assist his countrymen in Cuba in their struggle against the Spanish rule; and that he has done it, notwithstanding the law of the United States forbids the means which he has used. That is a matter, so far as the moral aspect of the offense is concerned, entirely with his own conscience. But that being his conception of his duty, it seems to me that it is obvious that nothing but an enforced obedience to the law will prevail; and as he does not think it is a law which he ought to obey, the court, if it attempts really to enforce the law, and not merely pretends to enforce it, must inflict upon him such a punishment as will prevent his continuing to break the law, and will be a deterrent punishment to others. It is certainly the duty of the court rigorously to enforce the law, and not be content with a mere perfunctory punishment.

It is, therefore, my duty to inflict such a punishment as will be a deterrent in the future; and the sentence of the court is that he be confined in the Baltimore City Jail for 18 months, and pay a fine of $500.

Mr. JOHNSON. Would it be worth while to make another application for bail, pending this writ of error that is going up?

COURT. With regard to that, the same ideas of my duty require-

ment, as I think, to refuse bail pending the writ of error. The exceptions taken during the trial do not, in my judgment, go at all to the real merits of the case; they are of the most technical character, and I have no doubt of the fairness and justice of the verdict. The law, this neutrality law, has been construed by the Supreme Court in several cases, so that there is very little doubt as to its real meaning; and it is not like a law which is being enforced for the first time, in which there might be doubt as to its proper construction; I am not troubled about any doubt on that score. I do not think it is a case to allow the prisoner to go on bail.

Mr. JOHNSON. It will be about 18 months before his case can be heard probably, and, therefore, it is quite within the range of possibility that this innocent man may be punished for that length of time, and the appeal be successful.

COURT. You cannot very well say he is an innocent man; he may be a man who has been convicted when there was some technicality which could have prevented his conviction.