THE ... EST OF WILLIAM WALKER.

... OF

HON. JOHN SLIDELL, OF LOUISIANA,

ON THE

NEUTRALITY LAWS.

DELIVERED IN THE UNITED STATES SENATE, APRIL 8, 1858.

Mr. SLIDELL. I ask the Senate to take up the next special order.

The motion was agreed to; and the Senate, as in committee of the whole, resumed the consideration of the joint resolution [S. No. 7] directing the presentation of a medal to Commodore Hiram Paulding; the bill [S. No. 85] supplementary to the act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal certain acts therein mentioned," approved April 20, 1818; the resolution reported by Mr. Mason, from the Committee on Foreign Relations, in regard to the seizure of William Walker; and Mr. Slidell's amendment to these resolutions.

Mr. SLIDELL. As the resolution of the senator from Wisconsin, as well as the report of the Committee on Foreign Relations, is now under consideration, I will first proceed to explain the reasons why I shall vote for the amendment of my friend from Mississippi, and then present my views generally on the subject of our neutrality laws, and especially on the necessity of such a modification as is proposed by the amendment I have offered to the resolutions of the committee.

I presume that the senator from Wisconsin, in offering his resolution for the presentation of a medal to Commodore Paulding, did it rather to have an occasion to express his individual approbation of the conduct of that officer, than with any hope of his proposition obtaining the sanction of the Senate. The medal has heretofore been given only as a recompense for gallant service, accompanied by some degree of personal danger. To this rule I think there can be found no exception. The resolution seeks to confer it for gallant and judicious service. The senator from Wisconsin will scarcely claim that there was any ... remarkable display of gallantry in the capture of one hundred and fifty men, armed with rifles only, encamped on a sandy beach, directly under the batteries of a squadron mounting sixty or seventy heavy guns, and served by at least eight hundred men. Was his conduct judicious? This question presents a double aspect: Was the capture of Walker authorized either by his instructions, or by the law of nations? or, if by neither, were the circumstances such as to justify the exercise of a remedy above and beyond law, for effecting a high and useful purpose? I admire the man who, in great emergen-

...ion imposes upon him; but he does not take a responsibility which public sentiment. The ... it at his peril. He must ... instincts in such questions. If he be right, he will be sustained and applauded; if not, he must bear the consequences of his want of judgment and discretion. The masses will never be severe when the error proceeds from excessive zeal in the performance of a supposed duty.

It is not pretended that the capture of Walker, on the territory of Nicaragua, was justified by the instructions given to Paulding directly. Those to Lieutenant Almy of 12th October, expressly confine him to the prevention of the landing of any military expedition in any part of Mexico or Central America. These instructions were, of course, known to Commodore Paulding; indeed, he expressly admits, in his letter of 15th December, that he had gone beyond his instructions. He says: "I am sensible of the responsibility I have incurred, and confidently look to the government for my justification." Were the circumstances so grave and urgent as to justify the Commodore in assuming the responsibility of exceeding his instructions? Clearly not. Walker had with him one hundred and fifty men, without artillery, and with a very limited stock of provisions; his arrival had produced no other feeling than that of alarm among the people of Nicaragua and Costa Rica. No aid could be expected from them, and all reinforcements and supplies from the United States were effectually cut off. In a few weeks his motley band, composed mainly of desperate adventurers, with a few enthusiastic and misguided striplings, would have deserted him, and, probably, appealed to the American squadron for protection and subsistence. Walker would have returned, for the third time, to the country whose allegiance he had renounced and whose hospitality he had abused, a broken down and harmless Quixote. None of the false sympathy which has since been enlisted in his favor would have been excited; he would have wandered about for a while, complaining of the administration and boasting of what he would have achieved had he been allowed to carry out his schemes without the interference of the executive, and, perhaps, have settled down at last in the pursuit of an honest livelihood. Paulding has, for the time, succeeded, in the eyes of many of our people, in investing him with the martyr's crown—and pseudo-martyrs have, in all ages, found devotees to worship at their shrine.

In speaking thus of William Walker, I know that I shall bring upon myself the violent denunciation of certain presses, and perhaps shock the honest prejudices of many who, without examination or reflection, have approved his course, and admired his character.*

* The new Orleans Delta has insinuated that the few words I said on the 28th January, in relation to this subject, were elicited by an attack previously made by him on me, and were uttered in a spirit of recrimination. Now, the only occasion on which I have been honored by the notice of that gentleman, that I am aware of, is said to have been in his speech made at Mobile on 25th January. I have the report of that speech, as published in the Mercury on the following day. In that report my name is not mentioned; but, after Walker's arrival at New Orleans, and conference with his advisers there, he published in the Delta his amended version of it, in which my name was used. This was on the 29th January, the day after I had spoken of him in the Senate. From this specimen of the fair dealing of the Delta, the mouth-piece of Walker and his prime ministers, the public may judge of the credence that should attach to anything that may be said by it of me.

man who can be deterred, by such considerations, from expressing his opinions, has no business here; he is unworthy of the high trust which has been confided to him. Who and what, then, is William Walker? I speak only of his career since he first undertook the mission of regenerating Mexico and Central America. Except in that connexion, I know nothing of him. I am willing to concede that he is a man of good education, fair intelligence, gentlemanly habits, and, in private life, a man of irreproachable character. His first military enterprise was against Sonora; he landed there with a handful of brave men, and failing to meet with any sympathetic response from the people, of whom he proclaimed himself the champion and liberator, he escaped, leaving most of his deluded followers to perish miserably. We next find him landing in Central America, where, having espoused the cause of one of the factions that divide and devastate that wretched country, of which revolution and anarchy have long been, and, with the mongrel race that now occupies it, will ever be, the normal condition, he succeeded, with the aid of repeated reinforcements from the United States, in making himself virtually the supreme authority of Nicaragua. Not contenting himself with the substance of power, he must needs have the title also; by the convenient farce of a popular election, played with the soothing accompaniment of the bayonet, he became the President of the free and independent Republic of Nicaragua. He now, for the first time, had an opportunity of displaying his qualities as a statesman. One of his earliest acts was to confiscate the valuable property of an association of American citizens, engaged in the transportation of passengers across the isthmus—a company that had rendered him the most essential service in conveying the troops and supplies that were necessary to the support of his government. This new William the Conqueror next proceeded to dispossess the ancient proprietors of their domains, distributing them among his adherents. Among the recipients of these bounties, we find some whose civil services had secured to them this distinguished mark of presidential favor, and who, in the hope of perfecting their titles, were since actively engaged in getting up his last expedition. His whole career, as President, was marked by rapine and blood. In this he but too faithfully carried out the programme of a military government, not transitory, but permanent, indicated by his letter to General Goicouria, of 12th August, 1856, quoted by the Senator from Maryland, and in which he deputes him to solicit an English alliance, "to cut the expanding and expansive Democracy of the North."* This, then, is the chosen instrument for the Ameri-

* "GRANADA, *August* 12, 1856.

"MY DEAR GENERAL: I sent your credentials for Great Britain by General Cazeneau. They are ample, and will be, I hope, not without result. If you can open negotiations with England, and secure for Nicaragua the port of San Juan del Norte, you will effect a great object. It will be a long step towards our end. Without San Juan del Norte, we lack what will be, in the end, indispensable to us—a naval force in the Carribbean sea. The commercial consequences of this possession are nothing in comparison with the naval and political results.

"With your versatility and (if I may use the term) adaptability, I expect much to be done in England. You can do more than any American could possibly accomplish, because you can make the British Cabinet see that we are not engaged in any scheme for annexation. You can make them see that the only way to cut the expanding and expansive Democracy of the North, is by a powerful and compact southern federation, *based on military principles.*"

canization of these benighted regions! I will not recapitulate his various atrocities. Suffice it to say, that he, who was at first hailed as a deliverer by a portion of the people of Nicaragua, was soon regarded by its entire population with detestation; whilst having, by his own folly, cut off all available sources of support from the United States, he was but too happy to secure his own safety, and that of the miserable remnant of his followers, under the flag of the country whose citizenship he had repudiated. We have the most conclusive evidence of not only the universal horror in which Walker himself, but also of the appalling dread in which his very name is held by the whole population of Central America. This evidence we find amply revealed in the fact that the internecine war, between Costa Rica and Nicaragua, which had been waged with so much bitterness for the last two years, was immediately brought to a close by his advent on their shores, and all their differences adjusted by a treaty of boundary and alliance; and yet this man claims to be their liberator and regenerator!

As a soldier I believe that those who have served with him, and I have seen and conversed with many of them, claim for him no other qualities than personal bravery. This is the almost universal attribute of our people; its absence is the very rare exception to a general rule; but in the higher acceptation of soldiership, foresight, combination, distribution, and care of his troops, he had with him many superiors. In times of difficulty and danger, all looked to Henningsen for the head to plan, while Walker was only the hand to execute. So soon as his escape was effected, with the duplicity and heartlessness that has characterized all his actions, he assumes the tone of injured innocence, and reviles the man who had rescued him from certain captivity, and probably from an ignominious death. We have no authentic record of the number of American citizens who perished by the sword, disease, and famine, in this second expedition, but I have seen it estimated at between two and three thousand. If one may believe his boasts, thrice that number of Central Americans may be counted as his victims. No sooner has he set foot on his native land than he renews his machinations; but in the hope of lulling the vigilance of the national authorities, on the 29th day of September, 1857, he addresses to the Secretary of State a letter, of which I will read the concluding portion:

"So far as any violation, on my part, of the acts of Congress is concerned, I deny the charge with scorn and indignation. Having been received in the United States, when forced for a time to leave Nicaragua, I have, in all respects, been obedient to its laws. And permit me to assure you that I shall not so far forget my duty as an officer of Nicaragua as to violate the laws of the United States while enjoying the rights of hospitality within its limits."

I do not choose to stamp this declaration with the only epithet it deserves; but it is entirely in keeping with the assertion contained in his letter of 30th November to Commodore Paulding, that he was "engaged in what your government admits to be a lawful undertaking." Immediately after giving this solemn assurance to the Secretary of State, he proceeded to New Orleans and there commenced his preparations for his third expedition. I can add nothing to the lucid exposition of this part of the case by the senator from Mary-

land. The publication in the New Orleans papers the day after his departure of the names and rank of his officers and of the objects of his expedition; the false invoices and manifest of the lading of the Fashion; his detachment of fifty men at the mouth of the Colorado for the capture, by that detachment, of Fort Castillo; the immediate establishment of his camp on his landing at Punta Arenas; the arms, ammunition, and stores found there; the assumption of the pompous title of commander-in-chief of the army of Nicaragua, forgetting, for the moment, the pretension, which he has since renewed, of being the lawful President of that republic; all show so conclusively the object and character of his expedition, that it were an idle waste of words to dwell upon them.

But we are not left to mere inference or newspaper statements to establish the fact of a military expedition having been set on foot within the territory and jurisdiction of the United States, and of its having been carried on under the flag of the United States. Anderson and his men having abandoned Fort Castillo, surrendered themselves to our squadron, and were conveyed to Key West in the flag-ship. Eight or ten of the men who were there examined as witnesses, declared that they were enlisted at New Orleans to serve under Walker, that they all understood that there was to be some fighting, that all their expenses were paid from the time of their enlistment until they were put on board of the Fashion, in Mobile bay, that after they had been at sea three or four days, a battalion of four companies, composed of about forty men each, was formed, with captains, lieutenants, and sergeants, and from that time the roll was regularly called, morning and evening, and rifles and bayonets, taken from the hold of the steamer, were distributed. The United States district judge, before whom the men were examined, thought it unnecessary to inquire into the question of jurisdiction as to what had occurred on the high seas, as there was sufficient testimony to show the setting on foot of a military expedition at New Orleans, and directed them to be conveyed thither for trial. I shall, in the course of my argument, show that in the absence of all proof of a violation of the statute at New Orleans or Mobile bay, the organization on the high seas, on board of a vessel carrying the American flag, was within the jurisdiction of the United States.

I concur entirely with that portion of the report of the Committee on Foreign Relations which sustains the views of the President in his message of 7th of January, of his rights and duties under the act of 20th April, 1818, and asserts the legality of the instructions given to Commodore Paulding and Lieutenant Almy; but I go further, and maintain that the power to seize the Fashion and arrest Walker was not confined to the high seas, but might be lawfully exercised in the waters of Nicaragua; and this position is, I think, essential to the full vindication of the course of the Executive. Captain Chatard was deprived of his command for having failed to prevent the landing of Walker, who passed under the stern of the Saratoga, while that ship was at anchor in the harbor of San Juan. Paulding is declared to have committed a grave error in having captured him on the soil of Nicaragua. Something has been said of the inconsistency of censuring Chatard for having done too little, and Paulding for having done too

much. I can see no ground for the charge; while I am free to confess that I think the President's language too exculpatory of Paulding, and would have preferred to see him at once directing his recall. Although I have a good opinion of his ability and efficiency as an officer, under ordinary circumstances, he has shown himself unequal to the delicate and responsible duties of his late command. I say his late command; for I understand that he, having been ordered home, has been relieved by Commodore McIntosh.

I will now proceed to show, as I hope, conclusively, that the Fashion might have been lawfully seized by Captain Chatard, and carried, with Walker and his armed followers, to Mobile. She sailed from Mobile with American papers, and under the American flag, on an illicit voyage. The public and private vessels of the United States carry their nationality with them wherever they go; they carry with them also their jurisdiction; and many of the most esteemed writers on national law consider them as an extension of the territory. Azuni says:

"Finding that the commanders of armed vessels exercise the rights of sovereignty, even to the infliction of the penalty of death, in the ports and harbors of another sovereign, many authors, even Hubner among them, maintain that these vessels are to be considered as foreign territory."

The penalty of death, under the sentence of courts-martial, held on board of our ships of war in foreign ports, has, I believe, been more than once inflicted in those ports; and I doubt not that the senator from Texas will recollect that, in the waters of the United States, and, if I mistake not, in the river Mississippi, several men were hanged on board of a Texan ship of war. The maritime high court of France, in the case of the Sardinian steam-packet Carlo Alberto, August 6, 1832, held that "the flag of the sovereign is the sign of the nationality of a vessel; and, by the law of nations, it carries with itself its nationality and its sovereignty. Every vessel, therefore, sailing under the lawful authority of a power is reputed to be a continuation of the territory of that power." And in a supplementary decision in the same case, September 7, 1832, the court further held that "a vessel is a portion of the territory of the sovereign whose flag it bears." "The commanders of public armed vessels," says one of the best approved authorities on this head, "have a supervisory right over the merchant vessels riding in those ports where they themselves cast anchor."—(*De Rayneval, Droits de la Nature et des Gens.*)

The jurisdiction of a nation over its public vessels, even in foreign ports, is absolute and unqualified; over its private vessels, the extent to which it may be exercised is not so well defined. The true principle seems to be, that in everything not interfering with the public interests or the rights of individual citizens or denizens of the nation in whose ports she may be, the jurisdiction is complete, and generally exclusive. This was held by the French Council of State, in 1806, in two cases. I quote from Wheaton, page 155:

"The first case was that of the American merchant vessel, the Newton, in the port of Antwerp, when the American consul and the local authorities both claimed exclusive jurisdiction over an assault committed by one of the seamen belonging to the crew against another, in the vessel's boat. The second was that of another American vessel, the Sally,

in the port of Marseilles, where exclusive jurisdiction was claimed both by the local tribunals and by the American consul, as to a severe wound inflicted by the mate on one of the seamen, in the alleged exercise of discipline over the crew. The Council of State pronounced against the jurisdiction of the local tribunals and authorities in both cases, and assigned the following reasons for its decisions:

"'Considering that a neutral vessel cannot be indefinitely regarded as a neutral place, and that the protection granted to such vessels in the French ports cannot oust the territorial jurisdiction, so far as respects the public interests of the State; that, consequently a neutral vessel admitted into the ports of the State is rightfully subject to the laws of the police of that place where she is received; that her officers and crew are also amenable to the tribunals of the country for offences and torts committed by them, even on board the vessel, against other persons than those belonging to the same, as well as for civil contracts made with them; but that, in respect to offences and torts committed on board the vessel, by one of the officers and crew against another, the rights of the neutral power ought to be respected, as exclusively concerning the internal discipline of the vessel, in which the local authorities ought not to interfere, unless their protection is demanded, or the peace and tranquility of the port is disturbed; the Council of State is of opinion that this distinction, indicated in the report of the grand judge, minister of justice, and conformable to usage, is the only rule proper to be adopted in respect to this matter; and applying this doctrine to the specific cases in which the consuls of the United States have claimed jurisdiction; considering that one of these cases was that of an assault committed in the boat of the American ship Newton, by one of the crew upon another, and the other case was that of a severe wound inflicted by the mate of the American ship Sally, upon one of the seamen, for having made use of the boat without leave; is of opinion that the jurisdiction claimed by the American consuls ought to be allowed, and the French tribunals prohibited from taking cognizance of these cases.'"

But we may have, by our own statutes, an express recognition of the principle for which I contend. The African slave trade never was considered, and it is not now considered, contrary to the law of nations. It was not only tolerated, but encouraged, by the whole civilized world, until expressly prohibited by several nations to its own citizens; and when now carried on, under any flag, the ships of war of other nations can only interfere with it by authority of express treaty stipulations. Our first prohibitory act, passed 22d March, 1794, only applied to the traffic to foreign countries. The fourth section of the amendatory act of 4th January, 1804, declares that it shall be lawful for any of the commissioned vessels of the United States to seize and take any vessels engaged in carrying on business or traffic contrary to the true intent and meaning of the act, and to apprehend and convey every person found on board of such vessel, being of the officers and crew thereof, to the civil authority in some one of the districts thereof, to be proceeded against in due course of law. Here there is no limitation of place of seizure. The act of 3d March, 1819, authorizes the President, "whenever he shall deem it expedient, to cause any of the armed vessels of the United States to be employed to cruise on any of the coasts of the United States or Territories thereof, or of the coast of Africa, or *elsewhere*, when he may judge attempts may be made to carry on the slave trade by citizens or residents; and to instruct and direct the commanders of all armed vessels of the United States to seize, take, and bring into any port of the United States, all ships or vessels of the United States, *wheresoever found*, engaged in the slave trade; and to cause to be apprehended and taken into custody every person found on board, being of the officers or crew thereof, and convey them to the civil authorities of the United States, to be proceeded against in due course of law in some of the districts thereof."

Under this act, our ships of war have repeatedly seized, in the bays

and rivers of Africa, American vessels engaged in the slave trade, and sent them to the United States, where they have been condemned. No one has ever dreamed of invoking the law of nations to protect the vessel or their crews. It will be observed that, under these laws, the nationality of an officer or seaman will not protect him from punishment; it is, for the time, merged in that of the flag under which he sails.

It is clear, that whether Walker had renounced his allegiance to the United States or not, whether he was or was not a citizen of Nicaragua, whether those who accompanied him were or were not American citizens, whether they had or had not, technically, organized as a military force before leaving the waters of the United States, is entirely immaterial; the offence of carrying on a military expedition was a continuous one from the moment the Fashion received on board the arms for these peaceful emigrants, in Mobile bay. The facts I have before stated afford sufficient evidence of the purpose for which those men embarked; but we have proof of the military organization—the most positive and direct—in the testimony of some of them, taken at Key West.

Captain Chatard, then, failed in his duty, in not preventing the Fashion from landing Walker and his associates; and I should not have been much disposed to blame him, if, in hot pursuit, as soon as he discovered the character and objects of the men who had disembarked from her, he had arrested them; but the landing was effected on the 25th November; whilst the arrest was not made until the 8th December. Ample time had been afforded to the Nicaraguan authorities to invoke the protection of our squadron. Had they done so, Commodore Paulding would have been fully justified in arresting Walker; their silence would seem to authorize the inference that they preferred to deal with him themselves. As it is, it would appear that Paulding's action was taken, rather under the irritation produced by Walker's correspondence, than from any mature and well-considered judgment of his rights and duties on general principles, and the instructions of his government.

But these questions are all of very subordinate importance when compared with the policy of our neutrality laws, which, with the indulgence of the Senate, I will now proceed to examine with as much brevity as its great importance will admit. While I think the policy of these laws, not only sound but indispensable for the preservation of our peaceful relations with foreign powers, I by no means recognize the position generally assumed, that they do no more than vindicate well-established principles of international law. They go much further; they deprive our government of the faculty of doing that which all writers admit to be strictly consistent with neutrality—the granting to belligerents equal facilities, within our territory, for the enlistment of troops and fitting out of armed vessels within our territorial limits. There has been a prevailing error on this subject, in the public mind, from considering the statutory provisions of Great Britain and of the United States, the foreign enlistment bill, and our laws of 1794 and 1818, as merely providing specific penalties for acts which before had been admitted to be violations of the law of nations. So far from this being the case, it has never been considered a violation of neutrality

on the part of any nation to permit belligerents to enlist troops within its jurisdiction, unless the permission were granted to one of the belligerents exclusively. Vattal says, book 3, chapter 7, paragraph 110:

"The Switzers grant levies of troops to whom they please; and no power has hitherto thought fit to quarrel with them on that head. It must, however, be owned, that if those levies were considerable, and constituted the principal strength of my enemy, while, without any substantial reason being alleged, I were absolutely refused all levies whatever, I should have just cause to consider that nation as leagued with my enemy; and in this case, the care of my own safety would authorize me to treat her as such."

* * * * * "If the troops above alluded to were furnished to my enemy by the State herself, and at her own expense, it would no longer be a doubtful question whether such assistance were incompatible with neutrality."

Paragraph 118:

"A neutral nation preserves, towards both belligerent powers, the several relations which nature has instituted between nations." * * * "She ought, therefore, as far as the public welfare will permit, equally to allow the subjects of both parties to visit her territories on business, and there to purchase provisions, horses, and in general, everything they stand in need of, unless she has, by a treaty of neutrality, promised to refuse to both parties such articles as are used in war. Amidst all the wars which disturb Europe, the Switzers preserve their territories in a state of neutrality. Every nation indiscriminately is allowed free access for the purchase of provisions, if the country has a surplus, and for that of horses, ammunition, and arms."

Paragraph 126:

"If a neutral State grants or refuses a passage to one of the parties at war, she ought, in like manner, to grant or refuse it to the other, unless a change of circumstances affords her substantial reasons for acting otherwise. Without such reasons, to grant to one party what she refuses to the other, would be a partial distinction, and a departure from the line of strict neutrality."

Grotius not only recognizes the correctness of this doctrine, but shows, by its existence in remote antiquity, that it is founded on simple rules of equity and good sense. He says, in his famous Treatise on on War and Peace:

"It is the duty of neutrals to do nothing which may strengthen the side which has the worst cause, or which may impede the motions of him that is carrying on a just war, and in a doubtful case to act alike to both sides."

He quotes with approbation the declaration of the Corcyrians to the Athenians that it was the duty of the Athenians, if they would be neutral, either to prevent the Corinthians from raising soldiers in Attica, or to allow them to do so.

Bynkerschoeck argues at great length the question whether it is lawful to enlist men in the country of a friendly sovereign, and decides it affirmatively. He says:

"It is certain that if a prince prohibits his subjects from transferring their allegiance, and entering into the army or navy of another country, such sovereign cannot, with propriety, enlist them into his service; but when no such prohibition exists, (as is the case of most of the countries of Europe,) it is lawful, in my opinion, for the subject to abandon his country, migrate into another, and then serve his new sovereign in a military capacity." * * * * "If, therefore, our subjects, whose assistance we do not want in time of war, and who are not prevented by any law from transferring their allegiance, may lawfully hire out their military services to a friendly prince, why may not, also, that friendly prince enlist soldiers in the territory of a friendly nation? Why should it not be equally lawful to contract for the hiring of soldiers in the territory of a friend as to make any other contract, and carry on any kind of trade?" * * * * "I am of opinion, therefore, that the same law which obtains as to the purchase of implements of war, must apply in like manner to the enlistment of soldiers in the territory of a friendly nation, unless it should be expressly stipulated otherwise between the two sovereigns."

He states a case which is peculiarly apposite in this connexion:

"A difference took place in the year 1666 between the States General (of Holland) and the Governor General of the Spanish Netherlands. The States complained to him that the Bishop of Munster, with whom they were at war, had enlisted soldiers in the Spanish territories in the Low Countries. The Governor answered that he had not authorized him so to do, but that, if he had, there was nothing to prevent him, as Spain was neutral in the war; and that the States General might exercise the same right if they pleased."

Martiens says:

"Every State has a right to give liberty to raise troops in its dominions, and may grant to one State what it refuses to another, in war or peace, without infringing its neutrality."

His position has a sort of a tacit sanction in many of our treaties. We have frequently stipulated that our citizens should not engage in war on the ocean against the powers with whom we have made treaties; but I think that I may safely assert that we have never, but once, bound ourselves to prevent enlistment for service on land. The exception to which I refer is to be found in the twenty-first article of the treaty made by Mr. Jay with Great Britain, on the 19th November, 1794; but this article, among others, was expressly limited to twelve years, and has never been renewed or revived.

The first treaty we find on this subject is that with the Netherlands, in 1782. It establishes that citizens of neither party shall take commissions or letters of marque for arming any ships, from any prince or State with which the other is at war. The same provision is found in the treaty with Sweden, in 1783, and in that with Prussia, of 1785; and in many others that it would be tedious to enumerate. The last cited treaty has an additional clause, which gives, by implication, the right for which I contend. It is in these words:

"Nor shall either party hire, lend, or give any part of their naval or military force to the enemy of the other, to aid them offensively or defensively against that other."

In the interpretation of public treaties, as well as in private contracts, this rule is recognized—*expressio unius, exclusio alterius*. The national force could not be employed, but individual action is not restrained. We then occupy this unfavorable position: while all nations may, without violation of neutrality, permit enlistments within their territory, for purposes hostile to us, we have deliberately tied our own hands and voluntarily deprived ourselves of one of the most efficient and legitimate means of carrying out our foreign policy.

I might present a thousand examples of the armed intervention of organized bands of citizens of a neutral State, in the wars between belligerent nations, or in the civil wars of Europe and America, and this without being considered as a *casus belli* with the power whose citizens had thus intervened. Switzerland has at all times exercised this privilege, in permitting entire regiments and brigades to be enlisted within her territory for the service of foreign belligerent States; and the several cantons have frequently had their citizens regularly organized in the ranks of both the contending parties. Elizabeth permitted troops to be raised in England for the assistance of the people of the Netherlands, in their contest with Spain, although she was then at peace with that power, because they were absolved from their allegiance, and free to choose their own government. Charles I authorized six thousand men to be enlisted for Gustavus Adolphus; and Major Dalgetty, immortalized by the author of Waverly, was but

the type of hundreds of soldiers of fortune, who, in those days, lent their swords to the sovereign whose cause they espoused, either from political or religious sympathies, or because they offered the largest stipend. Far from being a cause of reproach, service in foreign wars was considered a graceful complement of the education of a gentleman; and in time of peace at home young men were encouraged to acquire military knowledge and experience wherever the hardest blows were to be exchanged. During the protracted struggle between Spain and her revolted colonies on this continent, several thousand men were raised in England to aid the revolutionists. An entire legion, commanded by General Devereaux, completely organized, armed and equipped, sailed from England; and, although its destination was proclaimed to all the world, met with no interruption from the government. General Evans, then a member of Parliament from Westminster, and an officer of the British army, raised from five to six thousand troops in England, organized them under the title of the British Legion, and played a distinguished part in the Carlist war; he retained his commission and his seat in Parliament, and very many of his officers held commissions in the British army, and regularly received their half pay during the whole term of their service in Spain. Sir Robert Wilson was one of them, and at the same time held his seat in Parliament.

During the Greek war of independence, and after the passage of our neutrality laws, levies of troops and contributions of money were openly made both in England and the United States. Two frigates were built in New York for the Greeks; and the fund for equipping them falling short, one of them was purchased by our government—and this under authority of act of Congress—to enable the other to be despatched. In 1832, Captain Sartorius, of the British navy, was made a Portuguese admiral, and openly fitted out a considerable squadron, officered principally by gentlemen holding commissions in the British navy, and manned by British subjects, for the service of Don Pedro, in the war against Don Miguel. He was afterwards replaced by Charles Napier, then a captain in the British navy, and since commanding the Baltic fleet in the war with Russia. Miguel's fleet was captured by him. A large land force, also recruited in England, took part in the war, under Sir Milly Doyle, M. P. Lord Lansdowne said, in the debate on the foreign enlistment bill, June, 1819:

"All history would bear him witness in asserting, that this was the first attempt made to establish the principle, that the subjects of one State could not, privately and individually, assist those of another, where their respective potentates were not at war. He would venture to declare that, for the last four centuries, and down to 1787, when the Netherlands resisted Joseph II., there never was a period in which British subjects were not engaged in giving this succor, as individuals, to other States; and he defied any man to show him in what instance any government had interfered to prevent them, in the manner now proposed. The active interference of British subjects in the service of foreign States was, therefore, not inconsistent with the doctrines of neutrality."

Lord Althorpe said, on the 16th April, 1823:

"It was to be remarked that, until 1819, when this foreign enlistment bill was passed, excepting as far as related to the statutes of George II., it had been considered that England might be strictly neutral without such a law; and those who now supported it must contend that, from the Norman conquest downward, she had, in fact, maintained no real neutrality between the contending parties."

But we have seen that England, whenever it suits her policy, not

only authorizes but encourages her subjects to take part in foreign wars. She twice or thrice suspended the execution of the foreign enlistment law, and will do so again, whenever a sufficient motive offers. We alone have adopted the suicidal policy of so manacling ourselves that a law-abiding Executive cannot free us from our self-imposed fetters, although the best interests of the country may demand it.

The act, then, of April, 1818, is not an enforcement of the law of nations, but it is a restraint upon what, without it, would have been lawful and, in many instances, meritorious action of our citizens. The only really free representative governments of the world have thought proper to pass laws preventing the levying of armed bodies of men within their territory for the purpose of waging war against States with which they are at peace. Why? Because in these countries, in the absence of such laws, the executive would be without power to prevent the fitting out of any expedition, however much its objects might conflict with the interests of the nation or the policy of the government. These expeditions, although in themselves no violation of neutrality, where equal liberty is afforded to both belligerent parties to enlist men and purchase munitions of war, are certain to lead at once to acrimonious discussions and ultimately to terminate in war, where the party suffering by them is in a condition to avenge itself. Neutrality consists in affording no greater advantage to one party than the other. There are many circumstances in which, although on paper either belligerent may have the right to levy troops in a neutral country, in reality but one only can profit by it. The late war between Great Britain and France on one side, and Russia on the other, affords a striking example. The allies had complete command of the ocean, and could have transported any number of men, enlisted in the United States, without let or hinderance, to the Crimea; the Russians could not have conveyed a man or a munition of war to the relief of Sebastopol. Our neutrality would, in that case, had we permitted enlistment, have only been nominal, and Russia would have had just cause to complain of our conduct. To this danger we should have been exposed had not the laws of 1794 and 1818 been on our statute-books. The continental governments of Europe have no occasion for such legislation; because, with them the executive power can always control the movements of its citizens. In Great Britain, the Queen, in council, can always suspend the operation of the foreign enlistment bill, or prevent the shipment of arms, ammunition, or other military stores and equipments. This power I desire to confer upon the President when Congress is not in session. I do not attempt to conceal that it is a very grave, perhaps, in the hands of an indiscreet or unscrupulous man, a dangerous one; but it is to be exercised under all the high responsibilities that attach to the Chief Magistrate; and it is useless to disguise that, although the war-making power is given by the Constitution to Congress, any President can so conduct our foreign relations that Congress will have but to choose the alternative of sustaining him or disgracing the country, in the eyes of the world. Besides, although my resolution is couched in general terms, and indicates no such limitation, I do not desire to confer on

President the power to suspend the laws, except in cases where actual war exists between the powers, in reference to which the suspension is to operate, or when a civil war (and by this I do not mean a mere commotion or rebellion) shall have broken out in a foreign state or its colonies. When I made, four years since, a movement for the suspension of our neutrality laws, I believed, as I now believe, that a large majority of the people of Cuba was prepared to make a vigorous effort to throw off the yoke of their transatlantic oppressors, and, so far as my influence or councils could be useful, I was willing to aid them. I believed then, as I now believe, that a hostile feeling towards us then existed with the governments of France and Great Britain, and that they desired to Africanize Cuba. I avail myself, gladly, of the occasion to say that such, I am satisfied, is not now the feeling of these governments. Besides this, the people of Cuba, although still desirous of peaceful annexation, are not willing to run the risk of civil war and servile insurrection, to become members of our confederacy. Public policy must accommodate itself to circumstances, and any attempt to obtain Cuba, except by negotiation, should, in my opinion, now be abandoned. But should Spain be rash enough to invade Mexico, with the purpose of establishing a despotic government there under the name of Santa Anna as dictator, or under any other name or title, then I think that our citizens should be permitted to take part in the contest. I wish this to be done legally. All the power of the government cannot restrain them from doing it, and there should be no law on our statute book that cannot be enforced. There are many contingencies, about which I do not choose to speculate, where the interests of the country would clearly call for the suspension of our neutrality laws; and if this power be not given to the President, under such restrictions as the wisdom of Congress may suggest, I am not prepared to say that I would not prefer to abolish them altogether, excepting so far as they may be necessary to carry out our treaty stipulations, and these, as I have before remarked, only apply to the fitting out of armed vessels. I have little hope of the passage of such a law as I have suggested. I have no pride of opinion on the subject, and if I fail, shall be satisfied with the conviction that I have done my duty in calling the attention of the Senate and the country to the subject; and it may be proper to state, in conclusion, that in presenting and advocating my resolution, I speak only for myself, and act without concert or understanding with any one.

The amendment offered by Mr. SLIDELL to the report from the Committee on Foreign Relations by Mr. Mason, is as follows:

Resolved, That it is expedient that the President of the United States be authorized during any future recess of Congress to suspend by proclamation, either wholly or partially, the operation of 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 the 20th of April, 1818, and of an act entitled "An act in addition to the act for the punishment of certain crimes against the United States," approved the 5th of June, 1794, should, in his opinion, the public interests require such total or partial suspension; such suspension not to exceed the period of twelve months, and the causes which shall have induced the President to proclaim it to be communicated to Congress immediately on its first meeting thereafter.

Resolved, That the Committee on Foreign Relations be instruced to bring in a bill in conformity with the foregoing resolution.

REMARKS

OF

HON. JOHN SLIDELL, OF LOUISIANA,

ON THE BILL

TO ADMIT KANSAS AS A STATE INTO THE UNION.

DELIVERED DURING THE NIGHT SESSION, MONDAY, MARCH 15, 1858.

Mr. SLIDELL said: The protracted debate on this exciting question is now drawing to a close, and I hope that we shall very soon come to the final vote. The discussion has been so generally participated in by senators; every point, material or immaterial, has been so thoroughly investigated, that were I disposed to offer an elaborate argument I could not hope to say anything that has not been anticipated by those with whom I concur, if not in all their premises, at least in the conclusions at which they arrive. But I owe it to myself, if not to the State which sent me here, to give, as I shall do very briefly, the reasons that will control my vote. I shall enter into no details, if for no other motive, because I have not the presumption to suppose that at this late hour I could command the attention of a wearied Senate.

I voted reluctantly for the bill that passed this body in February, 1856, by the vote of every democratic senator, not that I did not heartily approve the principle on which it was based, but because I was opposed to admitting any new State until it had attained at least the population which is established as the basis of representation in the other house. I yielded that point, as I am always prepared to yield on any question of expediency, to the opinions and wishes of the majority of those with whom I am politically associated, and especially to the judgment of the senator from Illinois, whom we were all then proud to recognize as our leader and champion.

I shall vote for the admission of Kansas with the Lecompton constitution, not that I now have or ever have had any strong hope that slavery will be permanently established there, but because I feel myself bound to discharge in good faith the obligations which I assumed in 1854 and 1856, and because, should she now be refused admission, I know that, whatever may be the pretext, the real motive is that she has presented to us a constitution recognizing slavery. Some rare exceptions in either House may be found of members honestly casting their votes against her admission on other grounds, but if that admission be now refused the existence of slavery will be the determining cause, and such will be the unanimous interpretation of the South. We of the slaveholding States can have no reliance for safety in the future but on stern, uncompromising adherence to the absolute, unqualified principle of non-intervention on the part of Congress in the question of slavery. In this case we are the more imperatively called upon to insist upon the application of this doctrine, because we are contending only for the abstract principle, while our opponents will probably enjoy all the immediate party advantages resulting from the admission. It is this circumstance which makes the course of our opponents more offensive to us: with us it is a point of honor—we are struggling for the maintenance of a principle, barren it is true of present practical fruits, but indispensable for our future protection—one which we are determined never to yield. You are not willing, even, that Kansas shall become a free State, unless you can at the same time inflict a gratuitous insult on the South. In this I am assuming to be correct the assertion so repeatedly and confidently made, and which, in fact, forms the staple of nearly all the argument and declamation which we have heard almost daily since the meeting of Congress, that a vast majority of the people of Kansas are opposed to the existence of slavery within her

limits. If, then, she be refused admission because it nominally and temporarily exists there, what may we expect when application shall be made by a State of which it will be a real and enduring institution? The scale of political preponderancy is constantly gravitating with increased rapidity in favor of the free States. If even now they are disposed to treat us with contumely and injustice, what may we expect when we shall be comparatively weak and defenceless? As yet we have abundant means to protect ourselves from aggression; and if the issue is to be made in our day or that of our children, it is wiser and safer for us to make it now. But we are assured that there is no reason for our apprehensions; that there is no considerable party at the North disposed to interfere with slavery in the States. No one who has observed the course of things here will place the least confidence in these asseverations. They are constantly falsified by the votes of senators, and, as they gather courage from success, by their deliberate declarations, they now throw off the mask which has heretofore disguised their purposes. I will cite a very recent instance: A bill was reported from the Committee on Foreign Relations to pay from an unexpended balance in the treasury a sum of money to certain persons for whom it had been received in trust, under a provision of the treaty of Ghent, for slaves carried off by the enemy in the last war with Great Britain. On what ground was it opposed by the senior senator from New York? On the ground that the proof of loss and ownership was defective, or that the fund was exhausted? No; on the broad, naked ground that the senator would never by his vote recognize the right of ownership of man in man. His name is consequently found recorded in the negative with those of every senator of his party present, with the single exception of the senator from Wisconsin who sits furthest from me, [Mr. Doolittle.] The same senator from New York still more recently said: "I expect to see this Union stand until there shall not be the footstep of a slave impressed upon the soil that it protects." Now, without being disposed to make indiscreet inquiries as to the age of that senator, I may fairly infer, from the large space he has so long filled in the public eye, that he cannot want more than ten to fifteen years to attain that term which the inspired Psalmist has given as the ordinary allotted period of human life—three-score and ten. The senator expects to live to see slavery totally abolished in every State and Territory of the Union—that is, within fifteen years. He, of course, will not pretend to say that the slaves will be voluntarily emancipated in that brief interval. Congressional legislation and the strong arm of Executive power must be brought to bear to effect such results; and I presume that the senator only awaits the admission of a few more free States to initiate his plan of operations. Had these declarations been made by any other senator, I should have paid but little attention to them, but coming from his lips they are peculiarly significant. He is "facile princeps," emphatically the chief of the abolition party, or, as they please to call themselves, the republican party. He always weighs well his words, and knows the full import of them; is invariably courteous and respectful in his language and deportment, and carefully abstains from saying anything personally offensive to southern men. It is this very moderation of manner that renders him the more dangerous enemy. What he says he will act up to, should his party obtain the ascendency. Let us hear no more, then, of our rights being respected by that senator and his associates, if ever they shall find themselves in a majority in both branches of Congress, with a President of their choice.

The State which I have the honor in part to represent is, from the character of her population, her peculiar geographical position, eminently conservative; the Union has on this floor no more devoted adherent than I am; in this, I obey not only the dictates of my individual judgment and feelings, but faithfully reflect the sentiments of a vast majority of the people of Louisiana. But it is the union of the constitution, the union of States, having equal rights and privileges—that is the Union to which my allegiance is due, which I have sworn to support, and to which I shall ever be found faithful. I have not belonged to the ultra school of politics. Some, indeed, of my constituents, if asked, would perhaps be disposed to question the entire orthodoxy of my State-rights principles, as not being quite as advanced as theirs. This, however, we will not dispute about. I am willing to be judged by my acts, if unfortunately the time for action shall arrive. But let me tell senators on the other side, be the shades of opinion among us what they may, that in whatever may touch the rights or honor of the South, she will present an undivided front to resist encroachment, be the consequences what they may. As to the slang phrases with which our ears are constantly regaled here, of slave-drivers, slave-breeders, traffickers in human flesh, &c., &c., they excite in us no other feeling than contempt; they are only worthy of consideration insomuch as they may be supposed to express the feelings and pander to the passions of a majority of the constituents of those who employ them. A mere looker on would observe no excitement here or among our people at home; he would, perhaps, be surprised to find that there were no popular meetings, no indignant speeches, no menacing resolutions. You misconstrue our calmness. The time was when declarations such as I have cited from the senator from New York would have caused a general cry of angry defiance. We now listen to them with an apparent apathy, which you, perhaps, mistake for indifference. It is this

very coolness which, if it were understood, would most alarm that portion of our northern brethren who really love the Union. It is the quiet, fixed, determined purpose, not wasting itself in idle words, infinitely more portentous of evil than the most clamorous demonstrations. Admit Kansas by this bill and all agitation will cease. In a few short weeks the people of the North will marvel at the excitement produced by a question which to them has really no practical importance. How can it in any way affect their interests, that a few hundred slaves shall be held by their masters in Kansas or in Missouri? The abolition of slavery in Kansas would not give freedom to a solitary being. And in this connexion it will be an economy of time for me to say now, that I fully recognize the right of a State legislature, at all times, to call a convention of delegates of the people for the amendment or total change of an existing constitution, even although that constitution may contain provisions forbidding its amendment for a certain period, and establishing certain formalities and limitations for the exercise of the right. This right of the people of a State to be exercised through the majority of their legislature is, in my opinion, absolute and inalienable; but were it not so at all times and under all circumstances, it is expressly guarantied to the people of Kansas by the second article of their bill of rights; besides, I think that general principles, and the bill of rights apart by the very terms of the constitution, it may be amended at pleasure until the last day of December, 1864. Entertaining these views, I am prepared to vote, with a mere verbal correction, for the amendment of the junior senator from Ohio, or for any other amendment of a similar char[illegible]—not that I consider it in any degree necessary to guarantee the right of the people of K[illegible] to alter and amend their constitution in their own time and in their own way, but because it may remove doubts and scruples on the part of others which I do not share. The amendment will not be in any sense a congressional interpretation of the constitution of Kansas, but a mere declaration that it is not our purpose, even by implication, to impair or limit the rights of the people of that State, whatever they may be—a surplusage dictated by an abundant caution, and to which no reasonable objection can be made. It has been suggested that this may be considered as a compromise. If I thought it in any degree, however slight, the compromise of a principle, it would not receive my assent; but I will not, from the fear of being charged with a disposition to compromise, withhold my vote from an amendment which some of our friends from the free States desire to see incorporated in the bill. They have, in depite of popular clamor and of partisan denunciation, stood nobly by us in support of our constitutional rights, and are entitled at our hands to every concession, short of a surrender of principle, which they may ask of us. If we reject this bill the agitation gotten up by plotting and unscrupulous politicians, operating upon the passions and prejudices of the people of the free States will be prolonged and aggravated until a peaceful solution of this vital question of slavery will become impossible. We have every reason, so far as material interests are concerned, to be a united and harmonious people; but we cannot shut our eyes to the melancholy fact that at this day there prevails between the masses of the people of the eastern and southern States as deep a feeling of alienation—I might say animosity—as ever existed between England and France. The fate of this measure will probably decide whether this feeling shall be kept alive and embittered until longer continuance of a connexion so distasteful and repulsive to both parties shall be intolerable, or whether we shall strive by a generous emulation in the interchange of good offices, by an abandonment of all irritating subjects of discussion, to become once more what we were in the infancy of the republic—States sisters in feeling as in name. What I have said of the consequences of the rejection of this bill is in no spirit of bravado or menace; it is uttered more in sorrow than in anger and with a full sense of the responsibility which attaches to it. I anticipate the old clamor of treason and revolution against all who venture to speak the truth on this question, but if it were not told now it might be too late to avert the danger that threatens the existence of a Union which in better days I was wont to believe would be perpetual.