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SPEECH

OF

HON. VOLNEY E. HOWARD, OF TEXAS,

ON THE

ACQUISITION OF CUBA.

DELIVERED

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ACQUISITION OF CUBA.

In the Committee of the Whole on the state of the Union, on the duty of the United States to take possession of and hold the Island of Cuba—

Mr. HOWARD said:

Mr. CHAIRMAN: I have risen to address some remarks to the committee in reply to the observations of the honorable gentleman from New York, [Mr. BROOKS,] the other day, touching the course of the Administration in relation to the subject of Cuba. I think he has done great injustice both to the law and to the facts connected with the course of conduct pursued by the Administration, and that he has also done injustice to the American citizens who were the victims of Spanish cruelty connected with this affair. It is manifest that the subject of Cuba is becoming one of great and growing national interest in this country. Its importance to my own State consists in this, that if Cuba was in the hands of an adverse or unfriendly maritime Power of any great strength, it would be impossible for the States bordering on the Gulf of Mexico to get their products to market; our great staples must rot upon the wharves of our southern commercial cities. It is, therefore, a subject to which we must direct our attention and dispose of in some form or other.

Now, sir, in relation to the expedition which was the subject of the gentleman's comments, I agree in one view expressed by him, and that is, that it was the duty of this Government to suppress all illegal private enterprises against Cuba, or any other foreign country. And, sir, it gives me pleasure to be able to say upon this occasion, that the Administration of Mr. Polk did suppress an illegal expedition that was contemplated shortly after our late peace with Mexico, and into which an effort was made to draw our soldiers on their return.

The letter of Mr. Buchanan, the Secretary of State of Mr. Polk, which has been so improperly published by this Administration, shows that that Administration interposed and suppressed a contemplated expedition against Cuba; that it issued directions to the officers of the army, and to all its civil officers who could act on the subject, directing that measures be taken that any such expedition should be suppressed. The measures adopted were efficient, and in this respect, the conduct of Mr. Polk's administration stands out in bold and honorable contrast with the course of his successors, for two such enterprises have since been set on foot, and descents upon Cuba effected in both instances. If the present Administration did not permit this expedition to go out, they were at least guilty of great negligence in relation to the matter, for which they ought to be held responsible to a just public opinion. For, sir, I take it to be an absurdity to say that this Government, with all its power, could not arrest an expedition confined to a single steamer. The use of ordinary diligence and exertion would have prevented that expedition from going out. Gentlemen on the other side cannot, therefore, accuse a Democratic Administration of this country of being negligent in relation to these expeditions against a neighboring Power; and in that respect, the Democratic party of this country stands in a much more favorable light, not only here, but elsewhere. I have no doubt that General Pierce will take efficient means to maintain and enforce the neutrality laws of the country.

While I am upon this subject, I may as well refer to another question. I am in favor of the Monroe doctrine; but I am not inclined to sustain certain resolutions that have been introduced into the other branch of Congress by one of the greatest statesmen of the country, which gives a formal notice to the world, that when any foreign Power attempts to settle or colonize on this continent, we will consider it an unfriendly act, a cause of war. I am not for abstract legislation on any subject. I do not see the propriety, by a joint resolution of Congress, of serving notice upon the whole world, after the manner of Richard Roe and John Doe in an action of ejectment, that whenever a colonization establishment, or any other settlement, shall be made upon this continent by a European Power, it shall be immediately a cause of war. I think that abstract legislation in all instances, is improper. The court which

wanders beyond the record in deciding a case, in judicial proceedings, generally has to retrace its steps; and when the legislator attempts abstract legislation in advance of the times, he commits a fault still greater, and more inexcusable. I prefer that each case should be left to its own circumstances. It is the part of wisdom to leave every case to be determined by its own circumstances. They will not only be a law for themselves, but find a means for their own peaceful solution. To attempt to determine this matter by legislation is not compatible with the theory of our Government. In the first instance, it is more properly a question for the diplomacy of the Government; and in the next place, if diplomacy fails, it is a question for the war-making power. To declare this policy by a law, in the shape of a joint resolution, would in a great measure take it out of the hands of our diplomatic agents, and limit the discretion of the President, to whose custody it has hitherto been confided. Sir, it must be apparent to every reflecting man, that the European Powers are much more likely to quietly concede Cuba to us if we do not thus ostentatiously assert such a principle by legislation, than they are to acquiesce in this doctrine so broadly stated as it has been put forth in those resolutions to which I allude. It is rather calculated to irritate than to be of any practical benefit.

But, sir, I do not think that the Senate resolutions state the Monroe doctrine fairly. The Monroe doctrine is, that if colonization upon this continent by European Powers shall endanger our safety, shall conflict with our great national interests or peril our institutions, then it will be a cause of war; but it is not, as these resolutions seem to contemplate, that every settlement upon any sand-bank on this continent is an offense, which is to result in war. I am opposed to any declaration, by legislative enactment or by joint resolutions of Congress, which would compel us in honor to go to war if a European Power should happen to take possession of any unimportant or barren spot upon this continent. I am in favor of this doctrine, that whenever a European Power undertakes to make a colonial establishment here which interferes with our great national interests, our national safety, or our institutions, we will then resort to the last argument, if the last argument becomes necessary to free ourselves of the difficulty; but I do not go beyond that. I am in favor of a practical enforcement of the doctrine when any necessary case shall arise.

But, sir, I am opposed to these resolutions for another reason. They are inadequate to the subject. They go upon the ground that we will not permit any foreign country to establish any settlement here; but at the same time that we permit present establishments to remain as they are, that we will never acquire Cuba without the consent of Spain. Now, I am at a loss to understand on what the Monroe doctrine, taking that view of the subject, is held to be based. If it has any sound basis, it must rest on a question of safety—that these colonial establishments interfere with our commerce and institutions, and endanger the stability of our Government. Well, if any existing establishment upon this continent interferes in the same way, and is pregnant with the same dangers, is there not as much reason that an existing establishment shall cease as there is that a new establishment or colony shall not be created? The one principle is precisely as broad as the other, and controlled by the same reasons. Sir, it is not a sound principle of international law which is attempted to be asserted by the Senate resolves. The whole doctrine rests, and can be based upon nothing else than that we have a right, under the international code, to take all those precautionary measures which the safety of the nation requires. Therefore, sir, for one, while Cuba remains in its present position—while it remains quietly under the power of Spain—while its present domestic relations are continued and its internal policy does not endanger our safety—I see no necessity for our attempting any design upon it.

But, on the contrary, if the projects of England should ever take a definite form, which have continued from 1820 to the present time—if there should be danger that any great maritime power will take possession of Cuba, and thereby disturb our safety, by locking up the commerce of the Gulf, including as it does that of the valley of the Mississippi and eight or ten States, then, under the international code as laid down by Vattel, Wheaton, and others, and as the principle has been stated by Chancellor Kent, we would be justified in taking possession of Cuba, although we might in justice and fairness be afterwards compelled to make a fair compensation for it to Spain, if the necessity for such a measure was created without any fault on her part, and if her conduct towards us had been fair and just.

Chancellor Kent thus states the rule on this subject:

"Every nation has an undoubted right to provide for its own safety, and to take due precaution against distant as well as impending danger. The right of self-preservation is paramount to all other considerations. A rational fear of an imminent danger is said to be a justifiable cause of war."—*Kent, Vattel, b.* 2, *c.* 4, *section* 49, 50.

I can well conceive that that necessity will probably arise. If any one of the great European Powers were to attempt to possess themselves of the Island, or if they were to attempt, what has been threatened, to change the institutions of the Island so as to make it a second St. Domingo, with a view of striking a blow at slavery in the United States, and thereby endanger the peace and security of the slave States upon the Gulf, then it would be the duty of this Government to interfere, and take possession of the Island and hold it as an American State or an American province.

The southern States on the Gulf would never permit Spain, as a matter of revenge in the case of a revolution by the Creoles, to abolish slavery in that Island, with a view to the destruction of the planters. They cannot permit such an example to be successful so near their shores. The instinct of self-preservation is too strong. This measure was threatened during the invasion of Lopez; it never can succeed so long as slavery exists in the United States; and any attempt of that sort, either by Spain or any other Power, will be followed by an immediate seizure of the Island, either by this Government or by the slave States on the Gulf of Mexico. There is no principle of international law that would require a great Government like the United States to permit itself to be thus assailed through a small colonial dependency of another and distant Power. England has been

very prompt to protect herself from like dangers by at once taking possession of the point of danger. If Cuba had been as near her possessions as ours, she would have seized it long since on half the provocation.

On what principle do the British hold Gibraltar, Malta, and several other strong positions, which give them control over the commerce of the world? Why, they have assumed them as being necessary to the protection of their own commerce. Upon this question of necessity, the policy of the Government is well settled, if Cuba should ever pass from the dominion of Spain to that of any other Power. The danger to be apprehended to this country and its institutions from the acquisition of Cuba by any other Power, as well as the intrigues of England in relation to the subject, have been pointed out and made the subject of comment by nearly every Administration for more than thirty years. These dangers were suggested by Mr. Adams while Secretary of State in 1822, in his official dispatches to our Minister to Madrid. In his dispatch to Mr. Forsyth, he says:

"The present condition of the Island of Cuba has excited much attention, and has become of deep interest to this Union. From the public dispatch and other papers which you will receive with this, you will perceive the great and continued injuries which our commerce is suffering from pirates issuing from thence, the repeated demands made upon the authorities of the Island for their suppression, and the exertions, but partially effectual, of our own naval force against them." * * * "From various sources intimations have been received here, that the British Government have it in contemplation to obtain possession of the Island." * * * "There is reason also to believe that the future political condition of the Island is a subject of much anxiety and of informal deliberations among its own inhabitants; that both France and Great Britain have political agents there, observing the course of events, and perhaps endeavoring to give them different directions."

In his dispatch of April, 1823, Mr. Adams again comments upon the designs of England, with reference to the Island; upon the impossibility of its inhabitants maintaining an independent government, alleging, that "their only alternative of dependence must be upon Great Britain or upon the United States." In commenting upon the necessity of Cuba to the United States, he says:

"Such, indeed, are, between the interests of that Island and of this country, the geographical, commercial, moral, and political relations, formed by nature, gathering in process of time, and even now verging to maturity, that, in looking forward to the probable course of events, for the short space of half a century, it is scarcely possible to resist the conviction that the annexation of Cuba to our Federal Republic will be indispensable to the continuance and integrity of the Union itself."

After Mr. Adams was elevated to the Presidency, he maintained his policy in relation to Cuba, which was substantially repeated to our Minister to Spain in 1825, by his Secretary of State, Mr. Clay. In 1827, our Minister to Spain, Mr. A. H. Everett, gave information to the Government of an effort of England to revolutionize Cuba, based upon a dispatch of the Spanish Minister at London. The Spanish Minister admitted to Mr. Everett, that his Government had received information of the efforts of England. Mr. Everett says in his dispatch of December 12th, 1827:

"I then mentioned to Mr. Salmon that, according to the information which the Government of the United States had received, the object of the plan was to place the Island under the protection of Great Britain; but that the form of a declaration of independence was to be adopted, in order to avoid awakening the jealousy of the United States; that the United States would not, of course, be deceived by this artifice; that they could not view with indifference these movements of the British Government, considering it, as they did, as a settled principle, that the Island must in no event pass into the possession of, or under the protection of any European Power other than Spain."

Mr. Van Buren, as Secretary of State, in 1829, in his dispatch to our Minister to Spain, alluded to the designs of England and France with reference to Cuba and Porto Rico. With reference to the importance of the former to the United States, he said:

"The Government of the United States has always looked with the deepest interest upon the fate of those Islands, but particularly Cuba. Its geographical position, which places it almost in sight of our southern shores, and, as it were, gives it the command of the Gulf of Mexico and the West India seas, its safe and capacious harbors, its rich productions, the exchange of which, for our surplus agricultural products and manufactures, constitutes one of the most extensive and valuable branches of our foreign trade, render it of the utmost importance to the United States, that no change should take place in its condition which might injuriously affect our political and commercial standing in that quarter. Other considerations, connected with a certain class of our population, make it the interest of the southern section of the Union that no attempt should be made in that Island to throw off the yoke of Spanish dependence, the first effect of which would be the sudden emancipation of a numerous slave population, the result of which could not but be very sensibly felt upon the adjacent shores of the United States."

Mr. Forsyth, as Secretary of State, in his dispatch in 1840, repeated the views of his predecessors, and warned our Minister to be on the look-out against the designs of England on Cuba, of which the Government had been advised. Mr. Webster, in his dispatch as Secretary of State, to our Minister to Spain, says:

"The archives of your legation will show you that the subject of the supposed designs upon the Island of Cuba by the British Government is by no means new, and you will also find that the apprehension of such a project has not been unattended to by the Spanish Government."

In January, 1843, Mr. Webster communicated to our Consul at Cuba, the contents of a communication which he had received from a "highly respectable source," as to renewed designs of England upon Cuba. The writer makes statements about the designs of the British Ministry and British abolitionists, to bring about a revolution in Cuba, and erect it into a "black military republic, under British protection." He remarks, says Mr. Webster, "if this scheme should succeed, the influence of Britain in this quarter, it is remarked, will be unlimited. With six millions of blacks in Cuba, and eight hundred thousand in her West India islands, she will, it is said, strike a death blow at slavery in the United States. Intrenched

at Havana and San Antonio, posts as impregnable as Gibraltar, she will be able to close the two entrances to the Gulf of Mexico, and even prevent the free passage of the commerce of the United States over the Bahama Banks, and through the Florida channel." And although Mr. Webster says the Government neither indorses nor rejects these views, they are so stated by him as to show that they made a deep impression on his own mind.

It is apparent from all this correspondence, that it is the settled policy of the Government that Cuba is not to pass from Spain without coming under our own jurisdiction, and that the Island is not in a position to permit it to be an independent government without making it dangerous to our commerce, institutions, and national safety. Since this correspondence, our immense Pacific commerce has arisen, which passes within sight of Cuba.

A very accomplished officer of the Navy, Lieutenant Dalghren, in his report on the subject of fortifications, has expressed an opinion, which is obviously true, that, with all the fortifications we can place on our coast, we cannot protect our commerce in the Gulf of Mexico, with Cuba in the possession of a hostile Government. Indeed, Cuba is far more necessary to us, than Gibraltar or Malta is to England.

Mr. Dalghren says:

"The true and only key, however, to the defense of these shores and to the immense interest there collected, is the Havana. The island to which it belongs enters its western extreme into the Gulf, leaving but two passages for vessels, so narrow as to be commanded with the greatest facility; these are the great thoroughfares of trade, and the mail steamers from New Orleans to California and New York. Hence if the use of the Havana be even at the disposal of an enemy while in the hands of a neutral Power, each and all of these interests could be with difficulty defended, even by a superior naval force, and never guarantied against severe losses. While from it, as a United States port, a squadron of moderate size would cover the southeast and Gulf coasts, protect the foreign and inshore traders, and secure the lines from New Orleans or New York to the Pacific States by way of the Isthmus—its occupation would necessarily be the object of every expedition, military or naval, preliminary to any attempt on the southern trade or territory."

The rule of international law for which I am contending, is thus stated by Mr. Wheaton:

"Of the *absolute* international rights of States, one of the most essential and important, and that which lies at the foundation of all the rest, is the right of self preservation. It is not only a right with respect to other States, but a duty with respect to its own members, and the most solemn and important which the State owes to them. This right necessarily involves all other incidental rights which are essential as means to give effect to the principal end."

The European Powers are estopped from denying the application of this doctrine in its fullest extent, by having repeatedly acted upon it. By the treaty of Utrecht the French Government was compelled to demolish the fortifications at Dunkirk, because dangerous to others. By the treaty of Paris of 1815, France was compelled to demolish the fortifications of Huningen, and agree never to renew them, because dangerous to Basle. The doctrine of self-defense and self-preservation was the alleged justification of the combination of the Protestant Powers against Louis XIV., and for all the coalitions formed by the allied Powers against France, and more recently for the Congress of Troppau and Laybach, in relation to the Neapolitan revolution in 1820; for the Congress of Verona in relation to the affairs of Spain, and one of the grounds for British interference in the affairs of Portugal in 1826; for the interference of the Christian Powers in favor of Greece, principally on the ground that the contest encouraged piracies, and interfered with commerce; for the interference of Austria, Great Britain, and Russia, in the affairs of the Ottoman Empire in 1840. I do not mention these instances with approbation, but to show the existence of the right in a proper case, and that neither England, France, nor Spain, can complain of its exercise. England has seized possession after possession in India, on the ground that each instance was necessary to the preservation of her other possessions in that country.

The right of a government to take all necessary measures for its safety and self-defense consistent with reason and justice to other Powers, is stated more strongly by European writers than by our own. Vattel asserts that "since, then, every nation is obliged to preserve itself, it has a right to everything necessary to its preservation." * * * "A nation or State has a right to everything that can help to ward off imminent danger, and keep at a distance whatever is capable of causing its ruin; and that from the very same reasons that establish its rights to the things necessary to its preservation."

Cuba is even now in a transition state. It cannot continue long in its present condition. Revolts will continually occur there, for the seeds of liberty have been sown in that devoted Island. The people will be restive under the onerous and oppressive exactions of Spain. With the present commercial policy of that country, the revenues collected from the Island will not pay the army and navy necessary to keep the people in subjection. It is not, therefore, in my opinion, possible for the Island to long remain a dependency of Spain, and we can never with safety permit it to pass out of her dominion without becoming a portion of the United States. Cuba requires our utmost vigilance. The effort of England and France to induce us into a treaty in relation to the Island; the fact that those Powers combined to place fleets there under pretense of guarding its coast; the fact that England has assumed to erect a colony on the islands off the coast of Central America, and has now a considerable fleet in the Gulf and off the coast of Cuba, under the pretense of arresting the slave trade, all demand our vigilance, and preparation for any emergency. There is no doubt that, since the discovery of gold in Australia, England has, with increased interest, turned her attention to the Gulf of Mexico and the Isthmus, as a line of communication with her Asiatic possessions. We have been made to feel her power and weight in Mexico, in connection with the Tehuantepec route.

I dissent altogether from the position of the President that it would be inexpedient for us to acquire Cuba, if Spain consents to our acquiring it by treaty or purchase. I hold that it is our

highest national interest to become the possessor of that Island as soon as we can by cession from Spain. I cannot see the danger of sectional agitation from its acquisition which is anticipated by the President. There are ten men in the United States now in favor of acquiring Cuba, where there was one in favor of the annexation of Texas at the time of the Tyler treaty. The commercial class of the North generally are in favor of the measure as soon as it can be honorably accomplished. It is obvious that the northern States would be largely benefited by it in a commercial point of view. It is, in my opinion, a great mistake to suppose the acquisition of Cuba would give rise to any fresh agitation of the slavery question. If the Island were in our possession, we should effectually suppress the slave trade, and to that extent, its transfer to us would not only diminish slavery, but arrest a traffic which results in an annual loss of the lives of colored persons, nearly, if not quite equal in number, to those reduced into slavery by the trade. If Cuba were converted into a black republic, it would soon become a mere harbor for pirates, and the northern States would be the first to cry for the acquisition of the country. There is no danger that the North would risk the consequences of rejecting Cuba. They have too much interest in the preservation of the Union; far more than the South. Their whole commercial and manufacturing prosperity rests upon it. We have passed that crisis for the present century.

Neither is there any danger from the character of the population in Cuba. With the aid of the thousands which would flock there from every portion of the United States, they would have no difficulty in working our system. The admission of a free press, and the Protestant religion, would work wonders in the Island in a short time.

I will proceed now to the course of the Administration, which was the subject of the remarks of the honorable gentleman from New York, [Mr. Brooks,] the other day, touching the treatment which the prisoners taken in the Lopez expedition received by the Spanish authorities of the Island.

I repeat, that I am not a defender of the Lopez expedition, nor of any similar adventurers. But there are many things to be said in extenuation of that unfortunate occurrence. Cuba is, no doubt, oppressed by one of the worst governments on earth. It is more arbitrary than that of the Czar, and less humane because it is governed by officers from Old Spain, whose object is to amass wealth by oppressing the people by burdensome and onerous exactions. General Lopez, an ardent lover of liberty, was inspired with the ambition of freeing his country from this intolerable despotism. He pursued his high purpose with an energy, perseverance and courage, worthy of a better fate. He missed the fame and renown of one of the liberators of the age, only because his efforts were unfortunate. While the leader of a revolution is canonized by success, the unfortunate conspirator is covered with obloquy, and his name shrouded in disgrace. Narciso Lopez perished ignominiously by the garote, but his blood watered a soil that will yet bear the fruits of liberty, and a monument to his memory will hereafter be erected over the spot where he fell, by the hands of freemen. Every revolution generally has a victim before success.

It has been the policy of the authorities of Cuba to represent that the Creoles of the Island did not sympathize with the movement of Lopez. But the reverse is well known; an extensive revolt was at one time planned and organized. That is proved by the multitude of arrests and banishments, by the fact that all the prisons in the Island were crowded to overflowing. After the failure of the first expedition this organization was, to a great extent, broken up. A reorganization took place just before the second expedition of Lopez, and at one place, at least, a declaration of independence was promulged. There is no doubt that the extent of this movement was greatly exaggerated, and that the revolt was by no means as extensive as a sanguine man like Lopez was easily led to suppose. He was also made the victim of a stratagem by the government of Cuba. It is now known that he received letters written at the instance of the government assuring him he had only to show himself with a few followers, and that the population would flock *en masse* to his standard. It was this impression, no doubt, that caused him to set out with so small an expedition. Had he landed with two thousand men and a few pieces of artillery, there is no doubt that the enterprise would have been entirely successful. But when the Creoles saw that he had made a descent with only four hundred men landing in the vicinity of Havana, they perceived at once that all was lost, and abandoned a movement which they believed could not maintain itself against the Spanish forces on the Island.

There is no question that Lopez and his men believed they were going in aid of an extensive revolt, and a well organized revolution. The expedition was not undertaken in the spirit of aggression and plunder, but with a sincere desire to aid the cause of liberty. The expedition succeeded in getting out of our ports and failed, and the Americans embarked in it having been taken prisoners, I maintain were entitled to the trial secured to American citizens by the treaty of 1795, with Spain. Now I ask if they received that trial in any aspect of the case? It will be seen by the official correspondence, and also by the report of Commodore Parker, based upon conversations held with the Captain General of Cuba, as well as from the other correspondence which took place, and which may be found among our official documents, that the authorities of Cuba place the right they had to punish these men by trying them by the tribunals which did try them, and by denying them counsel as they did, entirely upon the ground that they were pirates. Now, I undertake to say, that no respectably adjudicated case can be found which will sustain the position that these men were pirates. What is a pirate? A pirate, according to the definitions of the writers on international law, is a robber upon the high seas. Such also is the definition of the Spanish law writers.

Piracy, says Chancellor Kent, is robbery, or a forcible depredation, on the high seas, without lawful authority, and done *animo furandi*, and in the spirit and intention of universal hostility. The Supreme Court of the United States has also defined the crime to be robbery upon the high seas; which is the universal definition of the writers on international law in modern Europe, including those of Spain. The offense of the Lopez men was not upon the high seas, nor done *animo furandi*, and no other piracy is known to the law of

nations. Neither was it piracy within the definition of the offense given by the acts of Congress.

Now, sir, you know the principles of international law are founded upon usage, upon treaty, and upon custom, and require the usage of more than one nation to ingraft upon them a single principle. That is a well-received doctrine, which has been recognized by the Supreme Court of the United States in passing upon one of the acts of Congress which assumed to add to the international code. The same principle has been recognized by the leading Powers of Europe with reference to the slave trade, which cannot be held piracy apart from treaties. Spain could not make these men pirates by its own declaration; if they were not pirates under the laws of nations, they could not be punished as pirates. I am aware that there are some elementary writers who have said that in unlawful expeditions like this, where the men are taken prisoners, they are to be treated as pirates and robbers, not entitled to the laws of war. But this is to be taken with qualifications; for the proposition as applied to these prisoners, is not supported by a single English or American adjudication. When they commit robbery, they should be punished as robbers; when they commit piracy, they should be treated as pirates; and when they commit murder, they should be punished as murderers.

Such was the language of Mr. Clayton, under the administration of General Taylor. He did not admit that the Contoy prisoners were pirates. On the contrary, he asserted, in relation to all of them, and especially the Contoy prisoners, that they had not committed the offense of piracy, and could not be punished as pirates, remarking that murder and robbery were grave offenses, but not piracy. When the State of New York arrested McLeod for his expedition into that State, and the destruction of the Caroline, he was not tried for piracy, but, as homicide had been committed, he was tried for murder, and given a regular trial in all the forms of law. It is true, that Judge Cowan, in passing upon the case, cited those authorities which allege that persons engaged in these expeditions might be treated as robbers and pirates. These citations were not long since published in one of the papers in this city; but the learned New York Judge did not rely on them as authority in point. And when examined, it will be found that all they intend to assert is, that if the offender commits robbery, he may be punished as a robber; and if piracy, as a pirate. He is not entitled to the benefit of the laws of war, a position which will readily be conceded. I do not say that the Spanish officers were bound to admit these men to quarter, if they had been taken in conflict with arms in their hands; but having given quarter, having received them as prisoners, they were entitled to the rights of American citizens. The fifty men under Crittenden, who were taken and shot, had not arms in their hands when they were captured. They were endeavoring to make their escape from the Island in two boats, as I have been informed by good authority. The men were in one boat, and the arms in another, which probably accounts for their surrender. As American citizens, then, guilty, not of piracy, but of an offense against the neutrality laws of this country, and at most a conspiracy against Spain, they were entitled to a trial. I concede that, as foreigners, they might commit treason against Spain, although that has been denied; but I think the affirmative of the proposition the better opinion. Still, they were American citizens, entitled to the benefit of the treaty of 1795 with Spain, which declares:

"And in all cases of seizure, detention, or arrest for debts contracted, or offenses committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted ('por orden y autoridad de la justicia,') by order and authority of law only, and according to the regular course of proceedings usual in such cases."

It will be seen that the language of the treaty is very broad, and applies to any citizen or subject who has incurred seizure or detention for "offenses committed." It is clear these American citizens were seized and detained within the meaning of the treaty. How, then, were they to be prosecuted? "By authority of law only, and according to the regular course of proceedings usual in such cases." Such language in a statute in England or this country, would be held to guaranty to the accused a trial according "to the law of the land," which, since the days of Lord Coke, has been held to mean a trial by the course of the common law, by presentment or indictment, and a jury. In Spain they have no juries, but the language of the treaty evidently contemplates a trial in the regular course of proceedings according to the civil laws of Spain. Their lawyers and books draw a wide distinction between the proceedings of what they term the ordinary and extraordinary tribunals. Civil courts are held by them to be ordinary tribunals, military and ecclesiastical courts are extraordinary tribunals, and not the regular course of proceeding, under their law, any more than a court-martial is our regular course of proceeding. This is still more apparent by reference to the Spanish side of the treaty, which our Supreme Court held in the case of Clarke, to be the true exponent of the provision of another treaty with Spain, when it alluded to Spanish law and proceedings, and even corrected a construction which the court had previously given to the English article in the treaty.

The Spanish side declares that American citizens shall be arrested and prosecuted "por orden y autoridad de la justicia." Justicia is ordinarily rendered justice; but in this instance, and generally when used with reference to judicial proceedings, is more properly translated *judicature*. The word in Spanish is of a much more technical meaning than *law*, which is used as the English equivalent in the treaty. The Spanish authors, when they use the word with reference to the administration of justice, apply it to the course of proceedings in the civil tribunals. And such is evidently its sense in this treaty. That such was the intention of the treaty, is apparent from the dispatch of Mr. Pinkney, a profound lawyer, who negotiated it, and who said it was a proper provision in treaties with all such countries as Spain. It is evident that he supposed he had secured to his countrymen in Spain, a regular trial in the civil courts in all cases. The object of this provision of the treaty was to rescue the citizens of the United States from these extraordinary and arbitrary tribunals; from these military and ecclesiastical courts, which had been the dis-

grace of the age, and the scandal of christendom. At all events, it was the duty of the Administration to contend for a reasonable construction of the treaty, which secured a fair trial to American citizens.

The construction put upon the treaty by the gentleman from New York cannot be sustained. His construction is, that these citizens of the United States were tried and punished in the same manner as Spanish subjects, and therefore they and their friends had no right to complain. Why, sir, it was to avoid that very thing that the treaty was made. It was to avoid the necessity of the citizens of the United States being subjected to these infamous military and ecclesiastical tribunals that this clause in the treaty was inserted; and the construction that is now attempted to be put upon it, would destroy the whole force and virtue of the guarantees of the treaty.

Again, the trial by a summary court-martial, was a violation of the treaty; because Spanish subjects could not, under the laws of Spain, be tried for treason in those cases where the arrest was made by military authority; they may be tried by the ordinary council of war, which is a permanent tribunal, but not by a summary court-martial. The trial was not therefore the *regular proceeding* in such cases even for Spanish subjects, and in this respect was a violation of the treaty,—a point I shall present more fully in connection with the case of Mr. Thrasher.

Sir, the Spanish authorities attempted to evade the force of this treaty, as I have said, by declaring that these men were pirates, who were not pirates according to international law. It was only by holding that they were citizens of no country, but the common enemies of mankind, that Spain could shield herself from the charge of having violated the provisions of the treaty of 1795. If you will look at the report of Commander Parker, who was sent to Cuba by the President to investigate this affair, you will find that the Captain General places his justification upon that ground almost exclusively in his first interview with Commander Parker; and you will see furthermore, by looking at the report, that the Captain General did not pretend that they had a regular or legal trial—not even that they had a regular trial before a military commission. He admitted that the trial was summary. Commander Parker thus reports his interview with the Captain General:

"He stated that he considered them as pirates, and that they had been so denounced in the proclamation of the President of the United States. That they were tried in a summary manner, and full proof made of their guilt, and that of their participation in the invasion of the Island by Lopez. He did not consider himself at liberty to furnish me with the proceedings on the trial, but would send them to his own Government, and to the Spanish Minister at Washington, who would do whatever was right in the matter, on the call of the Government of the United States."

Where is this, no doubt, *ex post facto* record? Why, sir, I marvel that any gentleman in this House should call it a trial. Those men were arrested one day and shot the next. Fifty men were brought to Havana one day and executed the next. This shows the impossibility of there being anything like a trial, with a fair opportunity to contest the proceedings. But we know in what the trial consisted, from the statements of respectable Americans in Cuba at the time. Several officers went into the room where these men were confined and took their voluntary statements. They admitted that they had been in the Lopez expedition; and upon that admission the order was issued by the officers that they should be shot. Is that a trial? Is that the trial contemplated by the treaty? If it is, it is in vain to stipulate with a foreign Power that our citizens shall be tried according to the laws of the land, with an opportunity to establish their innocence. We know that these men were not allowed to contest the jurisdiction of the pretended court; we know that they were not allowed counsel; we know that they were not permitted to have evidence, and we know that the whole thing was done in hot haste and in the spirit of revenge. Our Consul, Mr. Owen, came into town after they were condemned, interposed in their behalf, asked for a postponement, and for the release of some, if not all. The Captain General refused to permit him to intercede for the prisoners, and told him he must know that he was doing so against the wishes of his Government. The officers of Cuba hurried their victims to slaughter; and if the letters from Havana can be credited, their bodies after execution were brutally desecrated by the mob.

I think it, therefore, impossible to maintain that these men were tried by the regular tribunal secured to them by the treaty. But even admitting that it was regular to try them by a summary court-martial or any military tribunal, still I insist the treaty was violated; still I say that they did not have the benefits of the provisions guarantied to them by the treaty in relation to trials. It contemplates a trial which is not a mockery. It contemplates a trial which allows the party his witnesses. It contemplates a trial which allows him counsel. It contemplates a trial which gives him a hearing and not a judicial butchery.

Now, sir, it was asserted by the Spanish authorities—and it has also been asserted by this Administration—that if these men received such a sort of trial as Spanish subjects receive, then the stipulations of the treaty were complied with and secured to the criminals.

Sir, the treaty is not admissible of such a construction. The very reverse is the object of the treaty, and the bare reading of its words is sufficient evidence of the correctness of that position. The treaty declares:

"The citizens and subjects of both parties shall be allowed to employ such advocates, solicitors, notaries, agents, and factors as they may judge proper, in all their affairs, and in all their trials at law, in which they may be concerned, before the tribunals of the other party; and such agent shall have free access to be present at the proceedings in such causes, and the taking of all examinations and evidence which may be exhibited in the said trials."

If we admit that the court which tried Crittenden's men, being a military tribunal, had jurisdiction of the case, still, I say, the treaty was violated in the trial. Because they were never regularly arraigned; because they were not allowed to plead to the jurisdiction; because they were not permitted counsel; and because they were not allowed the regular examination of witnesses in their behalf, according to all the accounts which have reached us. The treaty is a distinct substantive provision, as to the employment of counsel.

It secures the right to American citizens to have counsel of their own choice "*in all their affairs*, and in all their trials at law." It relates to all trials before all the tribunals, whether civil or criminal, whether military or ordinary. It is therefore perfectly obvious that it never was the intention of Mr. Pinkney and the Spanish Minister, when they negotiated that treaty, to put it in the power of Spain, by transferring criminals to military tribunals, to deprive them of the right of counsel, the right of witnesses, the right of being present when the evidence was taken by which they were to be convicted. It is, therefore, in my estimation, preposterous to assume that American citizens, tried even before the military tribunals of Spain, can be deprived of counsel and witnesses merely because Spanish subjects are deprived of them.

Why, sir, I need not say to any lawyer in this House, that, whatever may be the general law of Spain, a particular provision for the benefit of American citizens made by treaty, is the law of the case, and that it is the duty of the Spanish tribunals to administer it as the law of the case.

I admit, that without such a provision, our citizens must be judged as the citizens of Spain are judged who have committed offenses within their jurisdiction. Suppose the Spanish Government passes an edict that when any one is believed to have committed felony, any officer of the army may order him to be shot without trial and without a hearing, does that abrogate our treaty with Spain? If the Cortes should pass a law declaring that no Spanish subject should have an advocate, agent, or counsel, on any trial before a Spanish tribunal, would it destroy, or in any way affect our treaty provision for the security of American citizens?

Sir, the Cuban authorities did not take any such position as to Crittenden and the other followers of Lopez, whom they executed. That was left to the ingenuity of the present Administration and its defenders. They knew that these men had not enjoyed even the benefit of the laws of Spain for the trial of its subjects who were guilty of treason. They were not even tried before the council of war, nor did they have the benefit of the rules of proceeding which prevail in that military tribunal. The Cuban authorities assumed that these men were pirates, and that whatever violence was done them, they were not citizens of any country, and therefore this Government could not complain. Now, sir, although the President did not formally denounce these men as guilty of piracy, although the administration of General Taylor stands committed upon the record of denying that the offense was piracy, yet in his proclamation Mr. Fillmore declared that "such expeditions can only be regarded as adventures for plunder and robbery." Certainly such was not the object of the leaders of that expedition, and to say so was to do gross injustice to their motives and characters. He then proceeds to inform them that they "will forfeit their claim to the protection of this Government, or any interference on their behalf, no matter to what extremities they may be reduced in consequence of their illegal conduct." In the first place this proclamation, by assuming the guilt of all parties in the expedition, anticipated the work of Concha's court-martial. It incited the Spanish authorities to pursue the very course they adopted.

If, sir, there was a provision in the treaty with Spain, which guarantied to American citizens the right of trial, the President could not give up that right unless they denationalized themselves by an act of piracy. He was bound to assert it for their benefit. The President cannot suspend the Constitution, nor treaty or laws made in pursuance thereof. On the contrary, he is compelled by his duty and oath of office to see them faithfully executed. It has been argued that the Lopez men had committed a heinous crime, and deserved to die; but men are not hung, in this country at least, by equity. The greatest criminals are as much entitled to the forms of law as the most innocent who are accused. If a guilty man may be condemned unheard, and without a trial, there is no safety for the innocent. The example set by Spain in the case of the Lopez men, if acquiesced in, places it in her power to execute any American citizen without giving him a fair trial. It has practically abrogated the treaty.

Again, sir, I disagree with the gentleman from New York [Mr. BROOKS] as to another branch of this subject. In the case of Mr. Thrasher, he has taken the ground that he had become naturalized, or at all events taken the oath of allegiance to the Crown of Spain, and that, therefore, he had forfeited his right of American citizenship, and was liable to be tried as a Spanish subject, and was not entitled to the benefits of the provisions of the treaty. Such, also, was the position of the Administration in relation to Mr. Thrasher, and they appear to have abandoned him to his fate without a struggle.

Sir, I am astonished that any one should take the position that Mr. Thrasher was naturalized, in view of the facts and the laws of Spain. What is the record, furnished by Concha himself, the Captain General of Cuba? It is, that Mr. Thrasher had not taken the oath of naturalization, and he summoned Mr. Thrasher before him when he attempted to publish a paper in Cuba in 1850, and prohibited him from publishing it, on the ground that he refused, when thus summoned, to take the oath of naturalization. He required him to discontinue his paper, or take the oath of naturalization. Thrasher refused to take the oath of allegiance to the Spanish Government, and was not, therefore, entitled to the benefits of the act of naturalization, and compelled to abandon his paper.

Mr. BROOKS, (interrupting.) Will the gentleman from Texas let me understand his point? Did I understand him to say that Mr. Thrasher did not take the domiciliary oath which was required of him by the Captain General of Cuba?

Mr. HOWARD. No, not the domiciliary oath. I admit he took that oath.

Mr. BROOKS. I believe the gentleman understands Spanish; the oath which he took was an oath of fidelity and vassalage to Spain—*juramento de fidelidad y vasallaje*. Is not that so?

Mr. HOWARD. No, sir, that is not so, if the gentleman means to assert that it was an oath of allegiance to Spain.

Mr. BROOKS. He was obliged to take such an oath under the laws of Cuba, of 1817.

Mr. HOWARD. I will set the gentleman right on that subject. In relation to that matter, gross injustice has been done Mr. Thrasher.

What is naturalization? When is a man naturalized? When he renounces the sovereign of his origin, and acquires the rights of citizenship

under the Government to which he transfers his allegiance. Now, what were the laws of Spain in reference to that subject? I have here the regulation of 1791, contained in the official documents accompanying the President's message. But this whole subject of settlement and colonization in Cuba was regulated in 1817 by a special law. It did not require Mr. Thrasher to swear himself a Catholic, as the gentleman supposes. It only required satisfactory proof of that fact. The regulation is contained at length in a work of great authority recently published in Spain, entitled "Legislacion Ultra Marina."*

The law of 1817, as to settlers in Cuba, is not unlike our own law of naturalization. It gives him five years to become naturalized, and gives him, in the mean time, the absolute right to return to his native land; and in case war broke out, he had the right to remove with all his property to his ancient home. At the end of five years he was to come forward to announce that it was his intention to remain perpetually in the Island, to prove his religion and his good conduct, and then to take the oath of naturalization, by which he was required "to promise fidelity to the Catholic religion, 'the King and the laws, renouncing everything 'foreign; all privileges and protection that would 'arise from being foreigners, and promising not to 'retain any dependence, relation, or civil subjec-'tion to the country of their birth." This was complete naturalization, but could only be acquired after proof of five years' residence. He was then furnished with his naturalization papers, and the law declared that "naturalized strangers shall enjoy all the rights and privileges of Spaniards." But this oath Mr. Thrasher refused to take when summoned before the Captain General, and it is therefore *res adjudicata*, in his office, that that gentleman was never naturalized, but refused to surrender his allegiance to the United States, and was in consequence refused the rights of a naturalized subject of Spain.

And now as to the domiciliary oath. It does not profess to be an oath of allegiance; and if it did, it would be in violation of the Spanish laws. It would confer no right on Mr. Thrasher, and would subject him to no loss of privilege as an American citizen. The domiciliary oath required him to swear fidelity to the laws of Spain and the Indies. It was, in truth, no more than the declaration required by our law of an intention to become a citizen, accompanied by an oath. Indeed it was not so much, as the Spanish law did not require such an intention to be declared. I am aware the form of oath furnished in the executive document, which was palmed off upon Mr. Webster by the Spanish authorities, purports to be an oath of allegiance; but if Mr. Thrasher ever took such an oath it was extra-judicial, and not authorized by the law, and gave no right. It was obviously a form of oath which had been made under the law of 1791.

The second section of the law of 1817 contains the whole regulation in force at the time of Mr. Thrasher's domiciliation. By that law he took, in the language of the law, "an oath (*juramento de fidelidad y vasallaje*) of fidelity and submission, 'in which they shall promise to comply with the 'laws and general orders of the Indies to which 'the Spaniards are subject." It is noticeable that while one of the translations from the Department correctly renders *vasallaje* submission, it translates

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**Naturalization law of Spain in Cuba.*

1st. All the strangers belonging to friendly Powers or nations who wish to establish themselves, or who already are in the Island of Cuba, must make it clear by the proper means to her Government that they profess the Roman Catholic religion, and without this indispensable circumstance, they shall not be admitted to domicile themselves there; but as to my subjects of these dominions and of the Indies, they are not obliged to prove this, because that, in respect to them, there cannot be any doubt as to this point.

2d. As to the strangers who are admitted according to the preceding article, the Governor shall receive from them an oath [juramento de fidelidad y vasallaje] of fidelity and submission, in which they shall promise to comply with the laws and general orders of the Indies to which the Spaniards are subject.

3d. When the first five years are past from the establishment of these foreign colonists in the Island, and they shall then enter into an obligation to remain perpetually in it, all the privileges and rights of naturalization shall be conceded to them, likewise to their sons whom they shall have brought with them, or who shall have been born in the same Island, in order that they may consequently be admitted to the honorable employs of the republic and the militia, according to the talents of each one.

5th. During the first five years, the Spanish or foreign colonists shall have the liberty to return to their former countries or ancient residences—and in this case they shall be entitled to take from the Island all the property and goods which they shall have brought into it, without paying any dues whatever, for taking them away—but of those which they have gained in the above-mentioned time, they have to contribute ten for a hundred.

9th. The liberty of the foreign colonists to return to their countries or ancient residences during the first five years is *absolute*, without limitation or condition, and they shall be able to take away their property, or dispose of it as they shall see fit.

In the case of war with the Power which is the natural country or sovereign of the domiciliated colonists, these do not lose the rights and advantages of their domicile in the Island of Cuba, although the five years from their establishment shall not have passed. Their property shall not be subject to embargo, sequestration, or any other of the provisions, ordinary or extraordinary, of the state of war. Those who, notwithstanding the war, wish to remain permanently in the Island, to accomplish their five years and naturalize themselves, shall be allowed to do so with perfect liberty, being of credit, good lives and customs. To those who prefer to absent themselves, sufficient time shall be conceded, so that with ease and convenience they can regulate their affairs and dispose of their property, being allowed to carry away all the property they brought with them, or an equivalent thereto, without payment of any dues whatever—and paying for what they have gained since, ten for a hundred, according to the 16th preceding article.

24th. The five years being past, and the foreign colonists wishing to naturalize themselves, shall repair to the Government with their letters of domicile, and they shall manifest that they oblige themselves to remain perpetually in the Island. The Government shall take the proper means of information, and their good qualities being certified, their continued residence for five years, landed property or industry, they shall be admitted to take the oath of naturalization, in which they shall promise fidelity to the Catholic religion, the King and the laws, renouncing everything foreign, all privilege and protection that would arise from being foreigners, and promising not to retain any dependence, relation, or civil subjection to the country of their birth—with the explanation, that this renunciation does not comprehend the relations or domestic correspondences of family or relationship, neither the economies of goods or interests, which every citizen stranger can maintain according to the royal schedule, and instruction of the 2d of September, 1791, and circulars since.

25th. With the declared requisites the Government shall expedite the letters of naturalization, by form of which they shall find the order in the royal exchequer ayuntamiento, and respective territorial jurisdictions, without costs or dues, as in the letters of domicile.

26th. The naturalized strangers shall enjoy all the rights and privileges of Spaniards, as likewise their sons and legitimate descendants, according to the 15th article of the preceding.

fidelidad, allegiance instead of *fidelity;* but nothing is gained by this translation, as it is allegiance to the laws, and not to the Crown of Spain. It is nothing more than the law of nations, under which, if a man comes here, he is bound to obey and not to violate our laws; but that does not make him a citizen of the country. It gives him none of the rights of an American citizen; for the principle is too plain to be controverted, that no man can be naturalized in a country until he complies with the laws and institutions of that country, which confers upon him the rights of naturalization. Mr. Thrasher did not do that. He refused to do it, which Concha himself admits. It is true Concha says he was something more than an American citizen; that he was domiciled, and had taken an oath to obey the laws and orders of the Indies to which Spanish subjects were compelled to submit; but he was careful not to say it was the oath of naturalization.

I have chosen to place this matter on the indisputable ground that Thrasher could not become naturalized without renouncing his former allegiance, and taking upon himself the allegiance of Spain, according to the Spanish laws. The judicial doctrine of this country goes the length of saying that no one can lose his allegiance until a method is provided for effecting it, by an act of Congress. Chancellor Kent, after a review of all the decisions, thus states the law:

"From this historical review of the principal discussions in the Federal courts on this interesting subject in American jurisprudence, the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of Government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

Concha rested the right of Spain to try Mr. Thrasher in the manner he was tried on the ground that the military tribunal by which he was tried was a regular tribunal of the Island of Cuba, created by law. What was it, sir? It was composed of a brigadier of the army, and six other officers. I shall not repeat what I have said in relation to there being no right to try an American citizen before a council of war; but I will content myself with this position, which cannot be successfully refuted: Although it were a regular tribunal, and had the right to try him, he was entitled to his counsel, his witnesses, his proofs, and his defense. I have never heard his own published account of the trial denied, as a truthful statement of the facts. It was communicated to Congress by the President. Mr. Thrasher says:

"On the 21st October, I was thrown into a dungeon of the city prison, and all communication with any person strictly prohibited. On the 25th, I was removed to my present dungeon, and the fiscal of the military tribunal made his appearance and began a judicial examination. On the 26th ultimo this was continued, and then I saw no one until the 4th instant, when the question was proceeded with, and on the 6th I was again questioned, and *finally informed that I was accused of treason.* At the same time I was required to select one from a list of officers that was presented to me, who should conduct my defense. Not knowing any of them, I chose at random, supposing he would consult with me and with my legal advisers, as is usual in such cases, in regard to my defense. On the 7th instant, I was, for the first time, allowed to see my friends, and to consult with them as to the best course to pursue.

"I conferred with our consul, and he passed several communications in my behalf to the Government here, all of which have been utterly disregarded and not replied to. On the 11th, I was informed that I was to be brought up the next day *for sentence.* I immediately wrote to my nominal defender, requesting him to come at once to consult with me, and to bring with him the proceedings, which are in writing. He replied, *verbally,* that he would come in the afternoon. *He did not come,* and I extended at once a protest against the proceedings, alleging that I had not been heard, and that neither myself nor my legal advisers had been consulted for a proper defense. I sent this to the president of the military commission that night, who refused to receive it, saying, it could only be admitted by the Captain General.

"The American consul, Mr. Owen, as soon as informed of this, proceeded to the palace and protested against sentence being pronounced, as I had not been heard in defense. In the morning, my nominal defender came to my prison to inform me that he had been allowed by the court *only twenty-four hours to prepare my defense; that he had been occupied until that moment examining the proceedings, which are voluminous, and that within an hour he must return them to the fiscal.*

"On the 12th I was taken before a court-martial, composed of a brigadier general and six officers of the army. The testimony and proceedings were read before I was brought into court, which is contrary to law and to custom, and when brought in I was asked *what I had to say to the charges against me?* I replied, *I had not been furnished with a copy of the charges;* that I had been denied access to the proceedings and testimony; that my nominal defender had neither consulted with me nor with my counsel, and that I now asked that my protest and petition for stay of proceedings should be admitted. I was told by the president of the court, that it should be considered. I was then removed to my dungeon, and heard nothing more of the proceedings until to-day, when I have been formally notified that *I have been sentenced to eight years labor in chains at Ceuta, in Africa, with payment of costs.*"

Do you call such a proceeding a trial according to the usual course of proceedings? Do you call that complying with the provisions of the treaty? I can tell my friend from New York, that an argument of that sort will not prevail with any lawyer, because the treaty is positive that he shall have counsel, which was violated in this case. They would not let him select his counsel from Spanish subjects generally. They furnished him with a list of Spanish army officers from whom he was to select one. He selected, as he has said, at random, not knowing a thing about it. That Spanish officer, as a matter of course, instead of defending the accused, did everything in his power to convict him.

It is evident that the provisions of the treaty were denied him, not only as to counsel, but as to being present at the taking of the testimony, which was taken in writing out of court. He was not furnished with a copy of the charges which, together with the written testimony, was read over in court, and then the prisoner was brought in and asked what he had to say for himself. It is obvious that he was not allowed a defense but condemned unheard.

The excuse rendered by the Cuban authorities

for not allowing Mr. Thrasher counsel was, that no counsel was permitted to appear in these cases before the military court, because it produced delay. It held back the victim from the "garote," and from chains, and the mines. Such an answer may content the present Administration; but it can hardly be a legal answer to a positive requirement in the treaty, that American citizens shall be allowed to employ *such advocates and solicitors* as they may *judge proper* in all their affairs, and in all their trials at law. Neither can it be a very satisfactory reply to an American, to assure him that all Spanish subjects are made victims of a similar barbarity.

It was not the usual course of proceeding, because no Spanish subject arrested as Mr. Thrasher was, could be tried before the council of war. The present laws of Spain, as stated in the work to which I have already alluded, declare:

"That conspirators being apprehended by the parties of troops, detailed for that purpose by the government, shall be judged by the ordinary council of war; but by the ordinary jurisdiction, if they were apprehended by the order of requisition, or in aid of the civil authority, except in case of resistance by the criminal to the troops. Then they shall likewise be judged militarily. In all other cases, according to article thirteen, the offenders who commit these crimes, shall be judged by the ordinary jurisdiction, even when the apprehension shall have been made by armed force, but with loss of special privilege. And in article fourteen, it is provided in the trials by this law, there shall not be any authority whatever, except such as shall be exercised by the ordinary and military jurisdictions, according to the limits which are here shown."

Mr. Thrasher's was not a military arrest. He was taken in the first instance to the office of police, and was in custody of the chief of police. His case was subsequently transferred to a military court. He was tried, therefore, in violation of the Spanish law, which gave jurisdiction of such a case only to the ordinary tribunals. The same remark is true of all those prisoners who came in and delivered themselves up under the proclamation of the Captain General, and of Breckinridge and Beach, of Kentucky, who were arrested at sea by a Spanish merchant ship, endeavoring to make their escape. Neither of them were military arrests, or made under such circumstances as gave the council of war jurisdiction of their cases.

The arrest of Breckinridge and Beach was a violation of the law of nations. Those gentlemen were in the Lopez expedition, but had made their escape in an open boat, and were a long distance from Cuba—outside of the league which limits the jurisdiction of any nation over the ocean—when they were captured by a Spanish schooner and brought into Havana. Concha, the Captain General, in reply to Commodore Parker, said that these men were pirates, and that he would try them as such. Now, the Spanish Government had no more right to seize those two men where they were captured, than it had to seize them in the streets of Washington city, unless the offense *was piracy*. They were, under these circumstances, brought into Havana and condemned by this military tribunal, which had no jurisdiction over them. I admit that, if they had returned voluntarily within the jurisdiction of the Island, they might have been tried by a competent court under the treaty. But having been arrested in violation of the law of nations, it was the duty of the Captain General to discharge them, and the duty of this Governmnt to demand their release.

The same was the case with the Contoy prisoners. They had only imagined a conspiracy, as we find in the old English books, that one used to be held guilty of treason who imagined the King's death. If anything criminal was fastened upon them, it seems that they only contemplated an expedition to Cuba. They were outside of the Spanish jurisdiction, anchored near an island in the sea, under the jurisdiction of Mexico. They were seized, and the Spanish authorities maintained that they had jurisdiction over them, because they were pirates. I believe that these prisoners were subsequently released, but that the vessels were not; and I understand from the honorable gentleman from Maine, [Mr. SMART,] that that subject remains now precisely where it was, and that the Government has taken no very efficient means to enforce satisfaction to the owners of those wrongfully-seized vessels. Let us make compensation, by an appropriation, to the Spanish Consul at New Orleans, whose property was destroyed by the mob. But let us also demand satisfaction for those violations of national law, and for the injuries which our own citizens have sustained in consequence of the violations of our treaty by the Spanish authorities.

A few observations in reply to the remarks of the gentleman from New York on the Crescent City affair. It seems to me to be undeniable, that it is not within the power of Spain to construe the treaty so as to break down the commercial intercourse between the two countries. Undoubtedly Spain might exclude a person from her shores dangerous to her safety. But the power must be exercised in reason, and not capriciously. They had the right to say that Mr. Smith should not land, but they had not the authority to say that the vessel should not come into port and discharge its cargo, and land its passengers and mails. It was not alleged that the ship, passengers, cargo, and mails were dangerous to Cuba, or even obnoxious to its authorities. They had no right to deny communication with the ship, unless its officers or crew had committed some offense against the revenue or other laws, and even then the remedy was by seizure and proceeding in admiralty. Mr. Smith exercised the right of every American citizen, guarantied by the Constitution, to publish his own opinions, if he exercised any right at all. He denies, however, having published anything. If he continued going there without landing, or violating their order not to land, from now to the day of judgment, and observed the institutions of Spain in Cuba, he might, when he returned home, have published his views, and Spain had no legal right to complain; it was no offense against her laws or jurisdiction. If she had a right to complain, she could only proceed through the judicial tribunals of this country; that might have been done in this country, as it was in England, in the case of Peltier, for a libel on Napoleon, and on the common-law principle of the greater the truth the greater the libel, there is no doubt Smith would have been severely punished. But to deny all commercial intercourse—to deny that the passengers should be landed, and the mails received, because "the individual, William Smith," published falsehoods in this country, relative to the

Spanish authorities in Cuba, is too ridiculous an idea to be entertained by any man but a Spaniard.

I admit if the authorities of Cuba had addressed themselves to this Government in the first instance, through the Spanish Minister, and requested that that individual should not be permitted to go on a semi-official vessel, as a matter of courtesy, the request should have been complied with. But what right had the Spanish authorities in Cuba to take a matter for the diplomatic agents of the Governments into their own hands, and exclude a vessel from commerce on such frivolous pretense? Commercial treaties are worth nothing if our commercial marine can be dealt with in that manner with impunity.

Sir, I have made these observations, not because I entertain any sentiments of hostility to the present Administration, but because I wish to draw attention to the gross manner in which the rights of American citizens are trampled on by other Powers. Its frequency has erected itself into impunity. The time has arrived when the American, like Briton, should feel the protection of his country's flag in the remotest corner of the globe. That Government which does not protect its own citizens against foreign oppression, will soon sink beneath their contempt, and the scorn of the civilized world. The time has arrived when new life and energy should be infused into our foreign relations.