

THE NEUTRALITY LAWS.

SPEECH

OF

HON. A. H. STEPHENS, OF GEORGIA,

IN THE HOUSE OF REPRESENTATIVES, JANUARY 13, 1858,

On the Neutrality Laws and the Arrest of General Walker by Commodore Paulding.

The House having resolved itself into the Committee of the Whole on the state of the Union, and resumed the consideration of the President's annual message—

Mr. STEPHENS, of Georgia, said:

Mr. CHAIRMAN: I cannot, in the little time which I have, reply to all that has been said in this debate which does not meet my approval, and which I think founded in error. I shall, however, in the remarks which I make, confine myself to a few principles which govern the whole question.

The proposition before the committee is to refer certain matters to the Committee on the Judiciary, with instructions to report upon the expediency of a repeal or modification of the existing laws upon the subject of the neutrality of the United States. I stated to the committee, when the subject was first mentioned, some reasons why I thought there ought to be a modification of some parts of the act of 1818. The views then presented by me, and by others who spoke on my side of the question, have been commented on at large by gentlemen on both sides of the House.

Now, sir, I wish to state in the outset that I do not intend that gentlemen on the other side of the question shall occupy our ground in this discussion. They shall not stand before the country as the advocates of law and order to the exclusion of myself and those who agree with me in the views which I present. They shall not stand before the country as the exclusive defenders and friends of the faith of treaties and the duties growing out of international law. That, sir, is the ground I stand upon. It is the ground I assumed when I addressed the committee before. I am here to-day as the advocate of law and order, of constitutional and international law. I am not in favor of individuals or nations breaking faith. I am here to defend the Constitution and laws, as I understand them, and the maintenance of the good faith of this nation. It is they who advocate and defend a breach of the law under the pretext of enforcing law.

Gentlemen have argued this question as if they supposed that I were against the maintenance of the neutral relations of this Government, as if I

were in favor either of nations or individuals violating the public faith. I disclaim it. I am for the national faith; and, so far as the laws of the United States declare or embody or set forth the law of nations, I would not erase a word or modify a syllable. I am not for repealing or abrogating our neutrality laws, so far as they express the laws of nations. But, if it be so, that a part of the act of 1818 goes further than the law of nations, I am myself in favor of a modification of that act to that extent. And, if there be any part of the law of 1818, which admits of a doubt, I am in favor of removing that doubt. Section eight of the act of 1818 does admit of a doubtful construction. Different Administrations of this Government have put different constructions upon that section of the act of 1818. I say that it should be made clear and distinct, beyond a doubt. As I said the first day, I say now, that is the part of legislators, and that is what I want to have done.

Now, sir, I wish to call the attention of this committee to the eighth section of the act of 1818, and I wish the reporters to publish that section in full, that those who may read hereafter, may understand as well as those who now hear me, with the law before them, what is the law upon this subject:

“Sec. 8. *And be it further enacted*, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or State, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or State, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the

prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or State, or of any colony, district, or people, with whom the United States are at peace."

In the first place, I affirm, I challenge contradiction; I defy any man to rise upon this floor and say that, under this act as it stands, the President can use the Army or Navy at all, either inside or outside of the marine league. It is only by construction, it is only by interpolating some words; for the language of the law is that he shall use "such part of the land and naval force." *What part?* Does it mean such as he may deem necessary? It does not say so. Does it mean such as may be in a certain place? What does it mean? Where is the correlative of *such*? As the section stands, it is meaningless; words were omitted. Read it for yourselves. There was clearly an omission in copying. But what I mean is, that this section needs revision and amendment. As it now stands, the President cannot, but by implication, but by construction, but by supplying some words not expressed, use any part of the military force anywhere.

Now, sir, I am not opposed to the President using such portion of the naval and land force of the country as may be necessary to enforce the laws. I do not want any gentleman to understand me as maintaining any such doctrine. I think the President should be clothed, and amply clothed, with powers to enforce your laws. But the law, as it stands, is meaningless and senseless.

There is, Mr. Chairman, another matter of doubtful construction in this act besides that. That is whether, under this eighth section, the President can use the land and naval force outside of the marine league, even with the omitted words supplied;—whether the law intended that he should? I stated when up before, and repeat now, that I do not believe that it was the intention of the act ever to confer upon the President any power outside of the marine league. I stated to the committee then, that I did not give the opinion without reflection. It was no new subject to me; and I now maintain all I then said.

I premise by stating this proposition: that all laws, in the legislation of this or any other country, are to be interpreted and understood as intra-territorial, and to apply within the jurisdiction of the law-making power, unless the contrary is expressed. General acts of Parliament do not extend to provinces or colonies without being so expressed. I affirm that, as an indisputable proposition, this act upon its face is intra-territorial. Whenever you give power to your Navy upon the high seas, or express extra-territorial legislative authority, it is so stated in the law, and expressly. Now, if we measure this law by that rule of construction, we are bound to suppose that the Legislature did not intend anything but an intra-territorial law. From the beginning to the end, everything about it shows that that was the intention.

Mr. GROESBECK. If the gentleman will allow me, I will call his attention to section third, which makes it penal for a person or citizen outside of the jurisdiction of the United States, to fit out a vessel to cruise against the citizens or vessels of the United States; and it further provides that,

if that be done outside of the United States, the person who does it shall be tried in the court of the district where he is first brought. That is the language.

Mr. STEPHENS, of Georgia. Certainly. Mr. GROESBECK. And, furthermore, the eighth section gives the authority to the President to employ the naval force to prevent the commission of this crime outside of the United States.

Mr. STEPHENS, of Georgia. That is your inference. That is the construction the gentleman has put upon it. Now, sir, the section to which the gentleman first alludes does declare, if an individual outside of the United States commits the offense that he states, if he be a citizen of the United States, that he shall be punished. But he is to be taken within the jurisdiction of the United States. In that part of the law which goes to the penalty, he is first to be caught, and caught inside. That is my construction. There is nothing here which commissions the President to go upon the high seas and seize such a citizen. That the gentleman infers; and I say that the inference is by construction, and an erroneous one. He has no authority to do it; moreover, this being a penal statute, it is to be strictly construed.

Mr. Chairman, I state as a second proposition, and I wish gentlemen to attend to it, that the President of the United States cannot use the military force—the militia, the Army, or the Navy, except by permission of the law; and here at the beginning, I differ radically, with almost every gentleman who has been upon the opposite side of this question. The gentleman, himself, who has just interrupted me, asked the other day, where is the limitation in the eighth section? What law does the President or Commodore Paulding violate, in arresting upon the high seas enterprises of this sort? What constitutional feature or clause is violated? Where is the restriction upon the President, or upon the naval officer? There is a fundamental difference between us. He has first got to show the law for it. And, sir, I say, and without the fear of contradiction, that the President of the United States cannot use the Army or the Navy or the militia, but in the enforcement of judicial proceedings, under our intra-territorial laws, with the exceptions I shall allude to. On the high seas, under particular laws, he is empowered to use the Navy. This is as a police; but under intra-territorial laws the President cannot use any of the military forces of this country but in subordination to, and in advancing legal process, and they are then called in as the *posse comitatus* to aid your marshal; and this is done by authority of law. This power was not given to the President, until 1795, and I call the attention of the House to that act. It is as follows:

"Sec. 2. *And be it further enacted*, That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States to call forth the militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress."

That is the act which empowers him to call forth the militia. In 1807 another law was passed, empowering him to use the Army and Navy in

the same cases only. Apart from these laws, the President has no power, intra-territorially, to use the Army or the Navy, with two exceptions: that is, to aid in putting down insurrection when called upon by the Legislature, or, in the absence of the Legislature, by the Executive of a State, which is provided in the first section of the act of 1795. These are the only cases under our law.

Now, when the gentleman speaks of any limitation, or when he asks me where is the limitation, I say, show the grant of the authority. The position I take is, that you first have got to show the grant. It is for you to show the authority. Now, then, the only authority the gentleman cited was the latter part of this eighth section, in which it is said, "And also for the purpose of preventing the carrying on," &c.

But, sir, I do not give the construction he does to the word "prevent," or carrying on. What does it mean? The gentleman argues that it means "break up," "to go out upon the high seas and arrest." I say "prevent" does not mean that. "Prevent," from *prevenio*, to come before; to stand in front. In the marine league, if you please, to prevent; to stay back; stand in front; prevent these excursions or enterprises from going or being carried on from the territorial jurisdiction of the United States. That is my construction.

Now, sir, as to *carrying on*, let us see if I am carried out and sustained by cotemporaneous understanding of this word. In 1794, Congress passed a law, entitled "An act to prohibit the *carrying on* of the slave trade from the United States to any foreign place or country. "*Carrying on*!" And in this very act the vessels of the United States are not empowered to make any seizure; there is to be no confiscation except intra-territorially. I read from the first section, speaking of those ships which shall thus be engaged. It is as follows:

"And shall be liable to be seized, prosecuted and condemned in any of the circuit courts, or district courts for the district"

not where the ship shall be found upon the high seas, but in the district—

"where the said ship or vessel may be found and seized."

That is, within the jurisdiction of the United States; and this act was entitled "An act to prevent and prohibit the *carrying on*," &c. Now, sir, if cotemporaneous interpretation of words in laws is allowed, I say I am justified in my inference that the Legislature meant by "*carrying on*" the same thing in the one case as in the other. The title of the act of 1794 was "to prohibit the *carrying on*," and there was no extra-territorial power conferred upon the naval officers. I have been asked if the President cannot arrest an offender against our laws upon the high seas. In cases of piracy; in case of the slave trade—for at this time that is declared piracy; in case of murder upon the high seas in American bottoms—all these cases are provided for by law. Hence my proposition, I maintain, is incontrovertible, that the President cannot use the Army and the naval forces of this country, unless by legal authority expressed.

Another reason for my construction is, that the part relied upon, that no extra-territorial authority was contemplated by this latter part of the eighth section of the act of 1818, empowers the President to use the Army and militia just as much as the Navy. Now, sir, I ask this House

—I ask the country—if, under that law, the Executive can use the Navy for the purpose of breaking up or preventing the carrying on of expeditions beyond the marine league, why he cannot, for the same purpose, transfer the whole Army and militia of this country into the interior of the foreign country, or wherever the expedition may go? Has not the President as much right to send the Army and the militia to pursue them, as he has the Navy? Has he, then, the right to send our entire military force into the interior of Nicaragua, or England it may be, if he cannot arrest the carrying on short of that point, provided the opposing party in any country consents? Some of Walker's party are in possession of Fort Castillo. Well, has the President a right to send an army up there to dispossess them? If so, the President of the United States may make war, or engage in any foreign war by the consent of one of the parties. All that will be necessary is for some of our people to take sides with one party, and then for the President, with the consent of the other, to send the Army, the Navy, and the militia, to prevent the "*carrying on*" of such interference. I tell gentlemen this is dangerous doctrine; there is no law for it. I stand on the laws. I am here to defend the Constitution of my country. I am not here the advocate of the breakers of law, in any sense of the word. It is you who would break the law, under pretense of arresting offenders. I say that this eighth section never, in my judgment, contemplated any such power. If the President has the right to send the Navy beyond the marine league, he has got the right to send the Army after the expedition into the interior of the country, consent being given, as I have stated. No gentleman can get out of that.

But, Mr. Chairman, I find that my time is passing. I took occasion, when I addressed the committee before, to express some opinions as to the law of nations. Some gentlemen have replied to them. The gentleman from Ohio [Mr. GROSVENOR] cited, the other day, the authority of Judge Story, in the Mariana Flora case, in which the *dictum* occurred that the United States ships may seize ships, commanded by American citizens, that are engaged in violating our law, outside of the marine league. But that was a case of piracy, very unfortunately for the gentleman who has cited that case.

Mr. SMITH, of Virginia. Congress has granted special power in such cases.

Mr. STEPHENS, of Georgia. Yes, Congress has given the power to seize on the high seas any vessel violating our law in such cases; and if Judge Story maintained anything else he has not cited any cases. And I still call for the case. I state, Mr. Chairman, as I said before, that this case of Paulding is, in my recollection, the first case of the kind in the country. I defied the production of a case. We have been here ten days, and no case has yet been produced. This is a new case, and we should settle principles as we go. Constitutional liberty, the rights of the people of this country, demand the settlement of these principles aright.

The gentleman from Pennsylvania [Mr. MONTGOMERY] cited, yesterday, what he called international law, to show that it was the duty of the Government of the United States to restrain its citizens. I wish to say, in passing, that that por-

tion of Vattel which the gentleman from Pennsylvania cited, refers to good neighborhood and to comity between neighboring States. I agree with every word of it. But in no case there cited, is it the duty of this or any other Government to go out into the territory of other nations to arrest its citizens or subjects offending there. The doctrine he cited is applicable to this case. If, on our northern borders, citizens of the United States go over and steal and commit robbery and violence in Canada, and come back here, and if we nourish and protect and guard them, that principle of law requires that we should restore the stolen property and punish the offender. I subscribe to every word of it.

But does that doctrine apply to this case? Now I lay down another position as being consistent with the law of nations, and I say that there is no power in the Government of the United States, nor does the law of nations require us to prevent American citizens, either by one, two, a dozen, or a hundred, from quitting this country, and going to other countries, and there joining the enemy of any party at peace with us.

Now, that covers the case. I am sustained in it by what I recognize to be the highest authority in this country. Would that my time allowed me to go more into detail! But I desire to call the attention of the committee to the opinion of Daniel Webster on this subject. In reply to the position assumed yesterday by the gentleman from Pennsylvania, I will read what Mr. Webster, in his correspondence with Lord Ashburton, in 1842, says:

"Whatever duties or relations that law (the law of nations) creates between the sovereign and his subject, can be enforced and maintained only within the realm, or proper possessions or territory, of the sovereign."

If you catch the offender inside, then you may punish him.

"There may be quite as just a prerogative right to the property of subjects as to their personal services, in an exigency of the State; but no Government thinks of controlling, by its own laws, property of its subjects situated abroad—much less does any Government think of entering the territory of another Power for the purpose of seizing such property, and applying it to its own uses. As laws, the prerogatives of the Crown of England have no obligation on persons or property domiciled or situated abroad."

Now, when citizens of the United States abjure their country, leave it, change their allegiance and domicile, and go to Nicaragua or elsewhere, there is no duty whatever resting on this Government to arrest them or punish them.

Mr. MONTGOMERY. That is certainly true as applicable to property. But would it cover the case of a man who attacks the sovereignty itself? When a man goes into another country to attack its sovereignty, can the sovereignty of that country be set up as shielding and protecting him who is attempting to destroy it?

Mr. STEPHENS, of Georgia. I do not set up the sovereignty of Nicaragua. I do not occupy that ground. I say that this Government has got no right to go there after men who were citizens of this country after they have parted with their allegiance; and Mr. Webster says that it is not incumbent on this country, by the law of nations, to do it. Nicaragua has got no embodied sovereignty at this time. She is the theater of factions. The only legitimately elected President of that Republic, by the popular vote, is William Walker. I assert that without fear of contra-

dition. The only legitimately elected President of that country is William Walker. He would, in my judgment, have been there to-day as secure in his place, and in the affections of the people, as our Chief Magistrate is here, if it had not been for the illegal, unconstitutional conduct of Commander Davis. Without the authority of law, Commander Davis compelled him to surrender. Gentlemen say that he was rescued. Walker never gave up the Granada, his own flag-ship, until the United States guns were leveled at her. To-day, but for the interposition of the officers of this Government, Walker would have been, in my judgment, as secure in the affections of the people there as our President is in ours.

Mr. MONTGOMERY. The gentleman will have no objection, I presume, to a resolution for sending Walker back, and allowing him to test the affections of the people of Nicaragua. I will vote for that.

Mr. STEPHENS, of Georgia. Certainly not. I want him sent back, and I stated so in the beginning; but it is what the Government, I am afraid, does not intend to do. It was to prevent this that Commander Davis, last spring, arrested him and brought him to this country; and it was to prevent this that Commodore Paulding has repeated a similar outrage. No, sir. He is first arrested, shorn of his arms, sent to this country, and turned loose, charged as being an offender against our country, and never tried. Can mockery upon outrage be more monstrous?

I said then, and I take occasion to repeat, that the act of Commodore Paulding was robbery and kidnapping. This some gentlemen expressed their regret at having heard. What is robbery? Webster, in his dictionary, among other definitions, says it is "to take by violence and oppression." Did not Commodore Paulding take Walker by violence and oppression? "To strip unlawfully." Did not Paulding strip him of his arms and his property, and send him to this country? Was it not done unlawfully? The President of the United States said, just as I said before I thought he would, that it was unlawfully done. "Unlawfully stripped." By the definition of your great lexicographer, and by the definition of every man, if he was unlawfully stripped, then it was robbery. And I say that restitution should be made. Send him back just as you found him, with all his men, with all his arms, and with all his provisions. That is all I ask you to do. It is all William Walker asks this country to do, and he will show this country whether he has the affections of the people there or not. Sir, for shame's sake, I ask this American Congress not to come here and assert the principle that Walker has committed a violation of our laws, and that he was rescued out of mercy. He feels no obligations for any such mercy. Just as the East Indians said when Hastings offered them the mercy of the British forces, "save us from such friends." I presume Walker would repeat the same. He wants none of your mercy.

Mr. MONTGOMERY. I desire not to interrupt the gentleman, but I wish to know if he defines this to be robbery?

Mr. STEPHENS, of Georgia. I have defined it to be robbery.

Mr. MONTGOMERY. I should like the gentleman to tell me if robbery must not be com-

mitted with felonious intent, and whether this act was committed with felonious intent?

Mr. STEPHENS, of Georgia. What the gentleman states is, in one sense, robbery. It is legal robbery. I did not say legal robbery, I said robbery.

Mr. MONTGOMERY. What kind of robbery?

Mr. STEPHENS, of Georgia. Robbery is the unlawful stripping of another. That is robbery; and all the medals that you may grant to Commodore Paulding, if melted and spread out to their utmost capacity, will not make a coating large enough and broad enough to hide the enormity of the deed. The spot will stand there as a stain upon the national escutcheon, unless it be wiped out by that restitution which alone can redress the wrong. You may say "out," but it will not out.

What says Webster is kidnapping? He says, among other definitions, it is "to forcibly carry away any person whatsoever from his own country or State, into another." Did not Commodore Paulding do that? Walker was legally naturalized; he was the legally elected President of Nicaragua. That is his country. He has been seized and forcibly carried away, and brought into this country. That, by the definition which I have quoted, is kidnapping. You cannot wipe that out. You have got to justify it as being legally done. The President of the United States says it was illegally done.

But I must hasten on. Upon the subject of the law of nations touching the duties of one nation towards another in the restraint of its citizens or subjects, in their conduct towards others, I affirm that it is in no way the duty of any nation to prevent the migration of its people to the other, even if they migrate with the view of joining the enemies of that nation. In other words, it is not the duty of this country, by the law of nations, to prevent its citizens from quitting this country with a view of taking sides in foreign wars, if, in quitting, they renounce their allegiance to this country. This whole doctrine is ably and lucidly set forth in Mr. Webster's letter to M. de Bocanegra, which I have before me. Mr. Bocanegra first addressed Mr. Webster when Secretary of State, on the 12th of May, 1842, upon the subject of the violation of our neutrality towards Mexico, by what he called invasion, from the United States. I read part of what he said, in which he sets forth his complaint:

"The Mexican Government entertained so high an opinion of the force of the Government of the United States, and of its power to restrain those, its subjects, from violating the religious faith of treaties solemnly concluded between it and other nations, and from committing hostilities against such nations in time of peace, that it cannot easily comprehend how those persons have been able to evade the punishment decreed against them by the laws of the United States themselves, and to obtain that quiet impunity which necessarily encourages them to continue their attacks. It is well worthy of remark, that no sooner does the Mexican Government, in the exercise of its rights, which it cannot and does not desire to renounce, prepare means to recover possessions usurped from it, than the whole population of the United States, especially in the southern States, is in commotion; and, in the most public manner, a large portion of them is turned upon Texas, in order to prevent the rebels from being subjected by the Mexican arms, and brought back to proper obedience.

"Could proceedings more hostile on the part of the United States have taken place had that country been at war with the Mexican Republic? Could the insurgents of Texas have obtained a cooperation more effective or more favorable to their interests? Certainly not. The civilized world looks on with amazement, and the Mexican Government is filled

with unspeakable regret, as it did hope and had a right to hope, that, living in peace with the United States, your Government would preserve our territory from the invasions of your own subjects."

In a previous part of the same letter he says:

"It is, however, notorious that the insurgent colonists of that integral part of the territory of the Mexican Republic would have been unable to maintain their prolonged rebellion without the aid and the efficient sympathies of citizens of the United States, who have publicly raised forces in their cities and towns; have fitted out vessels in their ports and laden them with munitions of war, and have marched to commit hostilities against a friendly nation under the eyes and with the knowledge of the authorities, to whom are intrusted the fulfillment of the law."

To this, Mr. Webster replied as follows, on the 8th of July, 1842:

"The revolution in Texas, and the events connected with it, and springing out of it, are Mr. De Bocanegra's principal topics; and it is in relation to these that his complaint is founded. His Government, he says, flatters itself that the Government of the United States has not promoted the insurrection in Texas, favored the usurpation of its territory, or supplied the rebels with vessels, ammunition, and money. If Mr. De Bocanegra intends this as a frank admission of the honest and cautious neutrality of the Government of the United States in the contest between Mexico and Texas, he does that Government justice, and no more than justice; but if the language be intended to intimate an opposite and a reproachful meaning, that meaning is only the more offensive for being insinuated rather than distinctly avowed."

Again:

"In the events leading to the actual result of these hostilities, the United States had no agency, and took no part. Its Government had, from the first, abstained from giving aid or succor to either party. It knew its neutral obligations, and fairly endeavored to fulfill them all."

"Mr. De Bocanegra's complaint is twofold. First, that citizens of the United States have supplied the rebels in Texas with ammunition, arms, vessels, money, and recruits; have publicly raised forces in their cities, and fitted out vessels in their ports, loaded them with munitions of war, and marched to commit hostilities against a friendly nation, under the eye, and with a knowledge, of the public authorities. In all this, Mr. De Bocanegra appears to forget that, while the United States are at peace with Mexico, they are also at peace with Texas; that both stand on the same footing of friendly nations; that since 1837, the United States have regarded Texas as an independent sovereignty, as much as Mexico, and that trade and commerce with citizens of a Government at war with Mexico cannot, on that account, be regarded as an intercourse by which assistance and succor are given to Mexican rebels."

"Acknowledging Texas to be an independent nation, the Government of the United States, of course, allows and encourages lawful trade and commerce between the two countries. If articles contraband of war be found mingled with this commerce, while Mexico and Texas are belligerent States, Mexico has the right to intercept the transit of such articles to her enemy. This is the common right of all belligerents, and belongs to Mexico in the same extent as to other nations. But Mr. De Bocanegra is quite well aware that it is not the practice of nations to undertake to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the law of nations, or by particular treaties. If it be true, therefore, that citizens of the United States have been engaged in a commerce by which Texas, an enemy of Mexico, has been supplied with arms and munitions of war, the Government of the United States, nevertheless, was not bound to prevent it, could not have prevented it, without a manifest departure from the principles of neutrality, and is in no way answerable for the consequences."

"There can be no doubt at all that, for the last six years, the trade in articles contraband of war between the United States and Mexico, has been greater than between the United States and Texas. It is probably greater at this moment. Why has not Texas a right to complain of this? For no reason, certainly, but because the permission to trade, or the actual trading, by the citizens of a Government, in articles contraband of war, is not a breach of neutrality."

"The second part of Mr. De Bocanegra's complaint is thus stated: 'No sooner does the Mexican Government, in the exercise of its rights, which it cannot and does not desire

to renounce, prepare means to recover a possession usurped from it, than the whole population of the United States, especially in the southern States, is in commotion; and, in the most public manner, a large portion of them is directed upon Texas."

"And how does Mr. De Bocanegra suppose that the Government of the United States can prevent, or is bound to undertake to prevent, the people from thus going to Texas? This is emigration—the same emigration, though not under the same circumstances, which Mexico invited to Texas before the revolution. These persons, so far as is known to the Government of the United States, repair to Texas, not as citizens of the United States, but as ceasing to be such citizens, and as changing at the same time, their allegiance and their domicile. Should they return, after having entered into the service of a foreign State, still claiming to be citizens of the United States, it will be for the authorities of the United States Government to determine how far they have violated the municipal laws of the country, and what penalties they have incurred. The Government of the United States does not maintain, and never has maintained, the doctrine of the perpetuity of national allegiance; and surely Mexico maintains no such doctrine; because her actually existing Government, like that of the United States, is founded on the principle that men may throw off the obligations of that allegiance to which they are born. The Government of the United States from its origin has maintained legal provisions for the naturalization of such subjects of foreign States as may choose to come hither, make their home in the country, and renouncing their former allegiance, and complying with certain stated requisitions, to take upon themselves the character of citizens of this Government. Mexico herself, has laws granting equal facilities to the naturalization of foreigners. On the other hand, the United States have not passed any law restraining their own citizens, native or naturalized, from leaving the country, and forming political relations elsewhere. Nor do other Governments, in modern times, attempt any such thing. It is true that there are Governments which assert the principle of perpetual allegiance; yet, even in cases where this is not rather a matter of theory than practice, the duties of this supposed continuing allegiance are left to be demanded of the subject himself, when within the reach of the power of his former Government, and as exigencies may arise, and are not attempted to be enforced by the imposition of previous restraint, preventing men from leaving their country."

Again:

"The chief Executive Magistrate, as well as functionaries in every other department, is restrained and guided by the Constitution and the laws of the land. Neither the Constitution, nor the law of the land, nor principles known to the usages of modern States, authorize him to interdict lawful trade between the United States and Texas, or to prevent, or attempt to prevent, individuals from leaving the United States for Texas, or any other foreign country.

"If such individuals enter the service of Texas, or any other foreign State, the Government of the United States no longer holds over them the shield of its protection. They must stand or fall in their newly-assumed character, and according to the fortunes which may betide it."

Sir, who said that? Daniel Webster, who was as learned in the law, State, constitutional and national, as any man that ever lived upon the face of the earth. He was known, sir, as the Great Constitutional Expounder. I am not here to defend all the opinions he ever uttered; but I believe that he was quite Federal enough in all his constructions. He was a man whose massive intellect, like a huge lens, gathering every passing ray of light, brought the whole to a focal point of intense clearness and brightness upon every subject to which it was directed. Every question to which his attention was directed never passed from his hands without being thoroughly explained and made perfectly clear to any intellect. That is what he says; that neither Congress nor the President has a right to prevent, or attempt to prevent, citizens from migrating from this country, even with a view of joining the enemies of a party at peace with us. They have a right to abjure their allegiance. Mr. Waddy Thompson, our Minister to Mexico at that time, in a circular letter, uses

similar language. I cannot read all of it; but he says, on June 6, 1842:

"Our own laws upon this subject, which embody to the fullest extent the principles of the law of nations, only authorize the prevention of armed and organized expeditions. It is not permitted, nor is it to be expected, that we should forbid emigration; nor is it a violation of the obligations of neutrality, that the country to which our people choose to emigrate, happens to be at war with another, with which we are friendly. The citizens and subjects of all countries have gone to Texas and joined its armies. The only difference is that a larger number of the people of the United States has gone to that country. Does the number alter the principle? If one may go, may not ten? If ten, why not a hundred, or a thousand? The principle is the same. An American citizen, for example, is about to embark from New Orleans, and he has his rifle, bowie-knife, and pistols. Have our authorities any power to stop him? If there are ten or a hundred, the case is the same. I go further. If they admit they are going to Texas, and intend to become citizens, and to join the armies of that country, it cannot be prevented. All that could be said to them would be, 'if you go to Texas and become citizens, you have a right to do so, to change your allegiance, and to discharge all the new duties which such a change of allegiance may exact; but you are no longer a citizen of the United States.' If a regular military expedition is fitted out, then it is not only our right, but our high duty, to prevent it. In all the revolutionary movements of the South American Republics, including Mexico, large numbers of our people joined the insurgents. It has always been so, and always will be."

Again, in the same paper, he says, in relation to the charge of citizens of the United States furnishing arms to the Texans:

"I assert that such trade is no violation of neutrality; that it has never been so regarded by any respectable writer on public law; and that it is a well-settled principle, that to send articles contraband of war to a belligerent, is no violation of neutrality; the only penalty being the forfeiture of the articles themselves."

On the 13th July, 1842, Mr. Webster acknowledges the receipt of a copy of this circular, in a letter to Mr. Thompson. In that letter, the only comment he makes upon the circular is in these words:

"You have not spoken of it (referring to a previous circular of Bocanegra's, complaining of what he called a violation of our neutrality toward Mexico) in terms too strong in your circular to the members of the diplomatic corps."

Now, sir, in the opinion of these men, I say that our law, as it now exists, does not prevent citizens of the United States, with arms in their hands, going into any country they please, provided they do not go in military organization. Military expeditions are prevented. Military expeditions are known; there is no mistaking them. Our laws say that they should be prevented, and I say so too, if it can be done within our own jurisdiction. But I say that General Walker had a right to go to Nicaragua. Those one hundred and fifty men had a right to go there. It was no military organization.

Some gentleman has said that General Walker sailed in fraud of our laws. Mr. Chairman, with all due respect, I think that was a mistake. General Walker's expedition was inspected. His ship was inspected. He got a regular clearance. He had a right to it. He went out upon the high seas with just as clear a manifest as any of our ships sailing the ocean. Mr. Webster has affirmed, as just read, that there is no power in the President, in the naval officers, or in the courts, under our laws as they were and still exist, to prevent the emigration of our people to other countries. That is all I affirm. Armed expeditions should be prevented.

I repeat, sir, in conclusion, as I have got but a few minutes left, that I am not here against the

neutrality laws, as far as they embody the well-settled laws of nations. I am for having them clearly and distinctly expressed. Armed expeditions, organized against the law of nations, I am against; but when American citizens see fit to change their allegiance, and to go, with rifle and bowie knife in hand, I say that they have a right to do so. Yes, sir, they have a constitutional right to bear arms in this country and to carry them wherever they see fit to go. They cannot use our soil on which to organize military expeditions. If they do so, stop them. If Walker committed a wrong, let him be tried. If his men violated the law, let them be tried, but do not add insult to wrong, mockery to outrage. Do not commit this great wrong upon him if he be not guilty. If you accuse him, try him; and if found not guilty, redress the wrong as you ought. My opinion is, that he is innocent; that he has violated no law. I am not here as his eulogist. History will take care of him.

Believing that he has violated no law, but that the law has been grossly violated against him, and vindicating, as I do, the constitutional rights of every man in our jurisdiction, whether citizen or not, I say, sir, that if he be guilty, try him; but do not interfere with the rights of any man upon the bare assumption of his being an offender, without a trial. His guilt has to be proved and judicially ascertained before he can be justly asailed as a criminal.

Mr. Chairman, I stated, and repeat now, that Walker's government in Nicaragua was recognized by this. Mr. Wheeler, our minister, recognized the Rivas Government, and recognized Walker as President. The representative of that Government here was recognized by this Government; and this Government did not, sir—and I want this House to know it—recognize any other than the Government under which Walker held office, until after he sailed on this expedition. We were at peace with no authority in Nicaragua but his. Let no man say that I am in favor of violating national faith; let no man put me in the position of speaking lightly of the national faith or the national flag. Gentlemen cannot occupy that ground: I stand upon it myself. The stars and stripes, whenever they wave over a gallant Navy in defense of the rights of our citizens, and in defense of national law, I shall hail with delight, and be

ready to respond, from the bottom of my heart, in praise of its chivalrous officers and men.

But, sir, the members of this House have been unfortunate in alluding to General Jackson, and to the case of Captain Ingraham. General Jackson himself took possession of Florida. He was, if you please, a grand filibuster himself. That was illegal. His error was on virtue's side. He erred for the country, and for the people's interests. But it remained to Commander Davis and Commodore Paulding, for the first time in our country's history, to bear that gallant flag, not in defense of men of their own blood, of their own flesh, of their own race, who had changed their allegiance; but it was the honor of these officers to bear the flag of their country against the interests of their country. It is the special honor of Commodore Paulding to have done what he did in anticipation of what a British commodore was about to do. He boasts of the deed, and says if he had not done it the British would have done it. His glory, as I understand it, is, that he stepped in and did the British work. When the American flag is prostituted to perform the work of a British officer, I cannot commend the deed. Why, sir, when Davis took this same man, a British commander was alongside. If it is coming to this, that our Navy in Central America is to do British work and British bidding, I say it is time they were called home. It was not such work as this that our daring commanders did in the last war, when they elevated the American Navy to that height of glory that it has attained, and of which we may all be justly proud. That was achieved by fighting the British, and opposing British policy.

I am for maintaining the same American policy against British policy that our Navy then maintained. I am for maintaining the laws of our country, and against aggressions of all sorts. I stand here to-day upon a general principle which involves the rights of American citizens. I am here also to defend the American flag, whether upon land or upon sea, as long as it is borne aloft in defense of these rights. According to these principles no citizen of the United States, or foreigner, within our jurisdiction, can be deprived of his life, of his liberty, or his property, but by the judgment of his peers and the laws of the land. Upon these principles I stand or I fall.

