

Case No. 18,265. CHARGE TO GRAND JURY—NEUTRALITY LAWS.
[2 McLean, 1.]

Circuit Court, D. Ohio.

Dec, 1838.

VIOLATIONS OF NEUTRALITY LAWS—ACCEPTING COMMISSION AND SETTING
ON FOOT MILITARY EXPEDITION AGAINST FRIENDLY POWER.

- [1. To constitute the offense of accepting and exercising a commission to serve against a foreign prince, state, etc., with whom the United States are at peace, under the first section of the act of congress, some overt act under the commission must be done, such as raising men for the enterprise, collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission was supposed to confer.]
- [2. To constitute the offense of beginning or setting on foot a military expedition against a friendly power within the 6th section of the statute, it is not necessary that the expedition shall be actually set on foot; it is sufficient if such preparations are made for it as show an intent to set it on foot]
- [3. To “provide or prepare the means for any military expedition or enterprise,” within the meaning of section 6, such preparation must be made as shall aid the expedition. The contribution of money, clothing for the troops, provisions, arms, or any other contribution which shall tend to forward the expedition, or add to the comfort or maintenance of those engaged in it, is a violation of this provision.]
- [4. A government is justly held responsible for the acts of its citizens; and, if the government of the United States be unable or unwilling to restrain our citizens from acts of hostility against a friendly power, such power may hold this nation answerable, and declare war against it]

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In regard to aiding or favoring unlawful military combinations, by our citizens, against any foreign government, or people, with whom we are at peace.

MCLEAN, Circuit Judge (charging grand jury). Your particular and most serious attention is requested to the provisions of an act entitled “An act to punish certain offences against the United States” [3 Stat. 447]. By the first section of this act, it is declared, “that if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, with whom the United States are at peace, he shall be deemed guilty of a high misdemeanor, and be fined not more than two thousand dollars, and imprisoned not exceeding three years.” And in the sixth section, it is provided, “that if any person shall, within the territory or jurisdiction of the United States, begin to set on foot, or provide or prepare the means for, any military expedition or enterprise to be carried on from thence, against the territory or dominion of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, every person, so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.” There are many other acts prohibited by this law, which relate to foreign powers, and which may be presented for your examination; but the above sections are considered the most important. The offence in the first section consists in “accepting and exercising a commission,” to carry on war against any people or state with whom we are at peace. “The commission may be conferred by any district of country, or association of people, whose right to confer it shall be recognized by the person appointed. And it is immaterial whether the commission has been conferred by the popular voice, or by the representatives of such district, or association of people. It must have been accepted and exercised, to come within your jurisdiction, within this state, by a citizen of the United States. Some overt act, under the commission, must be done; such as raising men for the enterprise; collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission is supposed to confer. Under the ninth section, the offence consists in beginning to set on foot, or providing or preparing the means for any military expedition or enterprise, to be carried on from the United States, against the territory or dominions of a foreign people or state. To “begin to set on foot a military expedition,” is not actually setting on foot such expedition; but it is making such preparation for it, as shall show the intent to set it on foot. To “provide or prepare the means for any military expedition or enterprise,” within the law, such preparation must be made as shall aid the expedition. The contribution of money, clothing for the troops, provisions, arms, or any other contribution which shall tend to forward the expedition, or add to the comfort of maintenance of those who are engaged in it, is considered to be in violation of the law. These acts must all be done under such circumstances as to show the criminal intent, unless such intent shall be avowed. And it is hardly to be

expected, that when an individual is about to violate the laws of his country, he will openly declare his intention to do so. Where the act and the attendant circumstances show the criminal intent no subterfuges or motives avowed, should screen the citizen from the consequences of such an act.

To come within your cognizance, every violation of this law must have been committed within this state; and by a citizen of the United States. These provisions are highly important, and they should be faithfully executed against all who violate them. Great excitement is known to exist, at this time, in Canada, from certain hostile movements contemplated by citizens of this country, in conjunction with the disaffected subjects of that country. It is said, on high authority, that associations of citizens of the United States have been formed, along the whole extent of our northern boundary, with the view, at a fixed time, to make a descent upon Canada. That these associations embrace an immense number of individuals, who are known to each other by certain signs and passwords. That they are actively engaged in collecting the materials of war, and raising men. That their military officers are appointed; and that, in anticipation of success, they have appointed civil officers.

I cannot but think these accounts have been greatly exaggerated, and that they may have caused an unnecessary degree of alarm. But that there is ground for apprehension of danger, no one can doubt. During the past winter, many of our citizens were engaged in this lawless enterprise. This is proved by the records of our own courts, and the courts of Canada, and by well authenticated accounts which have been published. Indeed, it is notorious that organized bodies of men, though, perhaps, not bearing arms, were marched through the northern part of this and other states, on our northern boundary, with the known intention of invading Canada, who were permitted to pass without molestation. And, it is believed that, in some instances, they were encouraged in their enterprise by contributions of money, provisions, and other necessaries. This state of things is deeply to be lamented. When our citizens, generally, shall cease to respect the laws, and the high duties they owe to their own government, there is but a slender ground of hope that our institutions can be long maintained.

An obedience to the laws is the first duty of every citizen. It lays at the foundation of our noble political structure; and when this great principle shall be departed from, with the public sanction, the moral influence of our government must terminate. If there be any one line of policy in which all political parties agree, it is that we should keep aloof from the agitations of other governments. That we shall not intermingle our national concerns with theirs. And much more, that our citizens shall abstain from acts which lead the subjects of other governments to violence and bloodshed. We have a striking instance of the wisdom of this policy in the early history of our government. During the administration of our first president the French Revolution burst forth, and astonished the civilized world. All Europe combined in arms against republican France. That France which had

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mingled her arms and her blood with ours in our struggle for independence. That this country should deeply sympathize with so noble, brave and generous an ally, in such a struggle was natural. Bursts of enthusiasm were witnessed in her behalf, in almost every part of our country, and an ardent desire was evinced to make common cause with her in favor of liberty. And this was claimed of our country as a debt of gratitude, and on the ground of treaty stipulations. Had this tide of popular feeling, which threatened to bear down every thing in its course, not been checked, our destinies would have been united with those of France. We might have participated in her military glory, and in the renown of her heroes. And the struggles, in which we would have been involved, might have given birth to a race of heroes in our own country, whose deeds of chivalry would have been celebrated in history. But our country would have been wasted by war and rapine; and the pen of the historian, which recorded the deeds of our heroes, would, also, have told, in all probability, that our country, like France, was driven to take refuge from the turbulence of party

factions, under a splendid military despotism. Fortunately for the country Washington lived, and the veneration in which his name was held, and the authority he exercised, mainly contributed to check the excitement, and preserve the peace and lasting prosperity of the country. The struggles of the people of South America, against the oppressions of their own government, again awakened the sympathies of our country, and produced a strong desire with many to unite our fortune with theirs. But this feeling was controlled, and the neutrality and peace of our country were preserved.

A government is justly held responsible for the acts of its citizens. And if this government be unable or unwilling to restrain our citizens from acts of hostility against a friendly power, such power may hold this nation answerable, and declare war against it. Every citizen is, therefore, bound by the regard he has for his country, by his reverence for its laws, and by the calamitous consequences of war, to exert his influence in suppressing the unlawful enterprises of our citizens against any foreign and friendly power. History affords no example of a nation or people, that uniformly took part in the internal commotions of other governments, which did not bring down ruin upon themselves. These pregnant examples should guard us against a similar policy, which must lead to a similar result. In every community will be found a floating mass of adventurers, ready to embrace any cause, and to hazard any consequences, which shall be likely to make their condition better. And, it is believed, that a large portion of our citizens, who have been engaged in military enterprises against Canada, are of this description. That many patriotic and honorable men were at first induced, by their sympathies, to countenance the movement, if not to aid it, is probable. But when these individuals found that this course was forbidden by the laws of their country, and by its highest interests, they retraced their steps. But, it is believed, that there are many who persevere in their course, in defiance of the law and the interests of their country. Such individuals might be induced to turn their arms against their own government, under circumstances favorable to their success. These violators of the law should not escape with impunity. The aid of every good citizen will be given to arrest them in their progress, and bring them to justice. They show themselves to be enemies of their country, by trampling under foot its laws, compromising its honor, and involving it in the most serious embarrassment with a foreign and friendly nation. It is, indeed, lamentable to reflect, that such men, under such circumstances, may hazard the peace of the country. If they were to come out in array against their own government, the consequences to it would be far less serious. In such an effort, they could not involve it in much bloodshed, or in a heavy expenditure; nor would its commerce and general business be materially injured. But a war with a powerful nation, with whom we have the most extensive relations, commercial and social, would bring down upon our country the heaviest calamity. It would dry up the sources of its prosperity, and deluge it in blood.

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The great principles of our republican institutions cannot be propagated by the sword. This can be done by moral force, and not physical. If we desire the political regeneration of oppressed nations, we must show them the simplicity, the grandeur, and the freedom of our own government. We must recommend it to the intelligence and virtue of other nations, by its elevated and enlightened action, its purity, its justice, and the protection it affords to all its citizens, and the liberty they enjoy. And if, in this respect, we shall be faithful to the high bequests of our fathers, to ourselves, and to posterity, we shall do more to liberalize other governments, and emancipate their subjects, than could be accomplished by millions of bayonets. This moral power is what tyrants have most cause to dread. It addresses itself to the thoughts and the judgments of men. No physical force can arrest its progress. Its approaches are unseen, but its consequences are deeply felt. It enters garrisons most strongly fortified, and operates in the palaces of kings and emperors. We should cherish this power as essential to the preservation of our own government; and as the most efficient means of ameliorating the political condition of our race. And this can only be done by a reverence for the laws, and by the exercise of an elevated patriotism. But if we trample under our feet the laws of our country; if we disregard the faith of treaties, and our citizens engage without restraint in military enterprises, against the peace of other governments, we shall be considered and treated, and justly too, as a nation of pirates.

Punishments, under the law, can only be inflicted through the instrumentality of the judicial department of the government. The federal executive has shown a zeal, worthy of the highest commendation, in his endeavor to check the career of these enemies of social order. He has very properly employed a part of the military force of the country in this service; and he has solemnly warned and admonished these deluded citizens, who seem ready to carry devastation into the neighboring province of a foreign and friendly power. These efforts of the president are in aid of the civil power, which, I trust, will not be found wanting on this, or any other emergency, in the discharge of the great duties which have been devolved upon it by the constitution and laws. But in vain will the civil authority be exerted, unless it shall be aided by the moral force of the country. If the hands of the ministers of justice were not strengthened by public sentiment, how ineffectually would they be raised for the suppression of crime. If the open violator of the law be cherished by society, he may, with impunity, set at defiance the organs of the law. The statute book which contains the catalogue of offences, would then become a dead letter, and would be a standing monument of deeply seated corruption in the public.

I invoke, in behalf of the tribunals of justice, the moral power of society. I ask it to aid them in suppressing a combination of deluded or abandoned citizens, which imminently threatens the peace and prosperity of the country. And I have no fears, that when public attention shall be roused on this deeply important subject; when the laws are understood,

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and the duties of the government; and when the danger is seen, and properly appreciated, there will be an expression so potent from an enlightened and patriotic people, as to suppress all combinations in violation of the laws, and which threaten the peace of the country.