

Case No. 18,266. CHARGE TO GRAND JURY—NEUTRALITY LAWS.
[5 McLean, 249.]

Circuit Court, D. Indiana.

May, 1851.

VIOLATION OF NEUTRALITY LAWS—SETTING ON FOOT MILITARY EXPEDITION
AGAINST FRIENDLY POWER.

[Under the provision of the sixth section of the act of 1818 (3 Stat 449), making it a misdemeanor to “begin or set on foot, or provide or prepare the means for, any military expedition or enterprise,” the overt act is not an invasion of a foreign country, but taking the incipient steps in the enterprise, such as providing the means for the expedition, furnishing munitions of war or money, enlisting men, and in short doing anything and everything that is necessary to the commencement and prosecution of the enterprise.]

CHARGE TO GRAND JURY—NEUTRALITY LAWS.

Extract from the charge to the grand jury of the United States circuit court:

HUNTINGTON District Judge (charging grand jury). After adverting to various offenses within the jurisdiction of the grand jury, and which it would be called to investigate, the judge referred to the contemplated invasion of the island of Cuba as a subject of national concern. He observed, the newspaper rumors, and the proclamation lately issued by the president authorize, if they do not require, the subject to be brought before the grand jury. It seems this nefarious plan is not of recent origin. The late chief magistrate, as well as the present not only issued a proclamation, but found it necessary to put in requisition a part of the army and navy, to preserve the peace and honor of the country. Doubts have been suggested whether the judicial power had been sufficiently active in bringing to punishment these marauders, who, under the pretence of liberating the oppressed; stand ready to engage in a career of plunder and murder. Whatever motives they may avow, this would be the result of their successful action. Such individuals, with the prospect of success, could easily be induced to turn their arms against their own country. They are reckless of consequences. By the laws of nations, they are justly held to be outlaws and pirates. The act of congress of the 20th of April, 1818, entitled, "An act for the punishment of certain crimes against the United States," etc., applies to these individuals. The first section provides: "If within the jurisdiction of the United States, any citizen shall accept and exercise a commission to serve a foreign prince, state, colony, district or people, in war, by land or by sea, against any prince, state, colony, or people, with whom the United States are at peace, shall, on conviction, be punished," etc. The sixth section provides "that if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide, or prepare, the means for any military expedition, or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, every person so offending, shall be punished," etc.

You will observe, gentlemen of the jury, that if any one "shall begin or set on foot, or prepare the means for such enterprise," he is within the statute. The overt act is not an invasion of the country, but taking the incipient steps in the enterprise. To provide the means for the expedition, as the enlistment of men, the munitions of war, money, in short, any thing and every thing that is necessary to the commencement and prosecution of the enterprise. In the ages of barbarism, private war was tolerated. Physical power was then the arbiter of right and a dexterous use of the instruments of death, was the prevailing logic. But this has been long since exploded among civilized nations. The Christian system has engrafted on the laws of nations a better logic—a logic addressed to the mind and conscience, and which conforms more to the principles of humanity. Every government is responsible for the acts of its citizens. They must be restrained from violating the rights

of other nations; and any government which has not the power or disposition to do this, subjects itself to a declaration of war by the injured party.

Our physical resources, gentlemen, are in a rapid course of development. In this respect our country has surpassed the most ardent anticipation of its friends. But Jewish to impress upon your minds, that this is not the most satisfactory evidence of our national prosperity. How have we made this wonderful advance? Is it not mainly attributable to that great and fundamental law which made us a nation, and to an observance of the laws, state and federal? These laws emanate from the people, through their representatives, and bear the impress of their will. A perseverance in this course will lead us on to a still higher and nobler destiny. But, gentlemen, no free government can be maintained without moral power. If this be broken down, physical power must be substituted in its place. As in France, we may still have a republic in name, but it will be a republic sustained by bayonets. A government of laws, sanctioned and sustained by the people, is the only guaranty for public and private rights. Whenever the law shall be trampled under foot and contemned, with impunity, there is no hope in the future. And may I not ask the question, whether there is not in the general aspect of our affairs enough to excite a deep solicitude on this subject? We see associations of lawless individuals in different parts of the Union, in contempt of the law, and the honor and peace of the country, ready to embark in a piratical war against a people, with whose government we are at peace. Other combinations have been formed to subvert the government, and others to resist, in an unconstitutional manner, enactments made by the highest authority. These indications are ominous. At an earlier period in the history of our government, an individual of the highest talent, and who had held the second office in the government was overwhelmed with infamy, and was criminally prosecuted, on the ground that he had set on foot a treasonable conspiracy against the government, by an attempt to divide the Union, and erect an independent western republic. But what do we now see? How painful is the contrast is this state of our affairs a matter of indifference to any one? What must be its effect, on foreign nations? Will it not shake their confidence in the permanency of our institutions, and weaken the moral force of our government at home and abroad? Who does not feel proud of the high position occupied by our nation, among the nations of the earth? And who does not desire to increase the glory of his country? This can be done only by a devotion to the constitution and laws of our country—laws enacted by the people, through their representatives; and which may be modified at their will. Every good citizen will throw his influence in this direction. It will discourage all unlawful combinations, and restore to this glorious government that harmony and moral power, which shall distinguish it among other nations. Make this government what, in its formation, it was intended to be, a government of the people, and maintain sacredly the great principles on which it was founded, and its blessings will be perpetual.