injury to such owner; but these are actions perfectly consistent with
*444] *the public right. But a recovery in an action of ejectment, if carried into execution, is directly repugnant to the public right.

Upon the whole, the opinion of the court is, that the judgment must be reversed, and the cause sent back with directions to issue a *venire de novo*.

Judgment reversed.

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*445] *UNITED STATES *v.* JOHN D. QUINCY.

Neutrality.

Indictment under the third section of the act for the punishment of certain crimes against the United States, &c., passed April 20th, 1818. The indictment charged the defendant with being knowingly concerned in the fitting out, in the port of Baltimore, of a vessel, with intent to employ her in the service of a foreign "people," the United Provinces of Buenos Ayres, against the subjects of the Emperor of Brazil, with whom the United States were at peace. The vessel went from Baltimore to St. Thomas, and was there fully armed; she afterwards cruised under the Buenos Ayrean flag. To bring the defendant within the words of the act, it is not necessary to charge him with being concerned in fitting out *and* arming the vessel; the words of the act are "fitting out *or* arming;" either will constitute the offence. It is sufficient, if the indictment charge the offence in the words of the act.

It is true, that with respect to those who have been denominated at the bar, the chief actors, the law would seem to make it necessary, that they should be charged with fitting out "and" arming; the words may require that both shall concur, and the vessel be put in a condition to commit hostilities, in order to bring her within the law; but an attempt to fit out "and" arm, is made an offence; this is certainly doing something short of a complete fitting out and arming.[1]

To attempt to do an act does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it; any effort or endeavor to effect it, will satisfy the terms of the law. It is not necessary that the vessel, when she left Baltimore for St. Thomas, and during the voyage from Baltimore to St. Thomus, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offence charged in the indictment.

The defence consists, principally, in the intention with which the preparations to commit hostilities were made; these preparations, according to the very terms of the act, must be made within the limits of the United States; and it is equally necessary, that the intention with respect to the employment of the vessel, should be formed, before she leaves the United States. This must be a fixed intention—not conditional or contingent, depending on some future arrangement. This intention is a question belonging exclusively to the jury to decide; it is the material point, on which the legality or criminality of the act must turn; and decides whether the adventure is of a commercial or a warlike character.

The law does not prohibit armed vessels, belonging to citizens of the United States, from sailing out of our ports; it only requires the owners to give security that such vessels shall not be employed by them, to commit hostilities against foreign powers at peace with the United States.

The collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable, that such vessels are intended to be employed, by the owners, to commit hostilities against some foreign power, at peace with the United States; all the latitude, therefore, necessary for commeacial purposes, is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war.

*446] If the defendant was knowingly concerned in fitting out the vessel, within the *United States, with intent that she should be employed to commit hostilities against a state or prince or people, at peace with the United States; that intention being defeated by what might afterwards take place in the West Indies, would not purge the offence, which was previously consummated; it is not necessary that the design or intention should be carried into execution, in order to constitute the offence.

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[1] See United States *v.* Skinner, 2 Wheeler's Cr. Cas. 232; The Meteor, 1 Am. L. Rev. 401.

United States v. Quincy.

The indictment charged that the defendant was concerned in fitting out the Bolivar, with intent that she should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata; it was in evidence, that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation, by the executive department of the government of the United States, before the year 1827; it was argued, that the word "people" was not applicable to that nation or power. The objection is one purely technical, and we think not well founded; the word "people," as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act af congress to a foreign power.

CERTIFICATE of Division from the Circuit Court of the United States for the district of Maryland. An indictment was found against the defendant in that court, at May term 1829, founded on the third section of the act of congress, passed April 20th, 1818, entitled, "an act in addition to the 'act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned"

The third section provides, that if any person shall, within the limits, of the United States, fit out "and" arm, or attempt to fit out "and" arm, or procure to be fitted out "and" armed, or shall knowingly be concerned in the furnishing, fitting out "or" arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, or shall issue or deliver a commission, within the territory or jurisdiction of the United States, for any ship or vessel, with the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel and furniture, together with all materials, arms, ammunition and stores, which may have been procured for the building and *equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States. [*447

The indictment contained fifteen counts, upon two only of which evidence was given; and the questions upon which the judges of the circuit court were divided in opinion, arose on those counts, and on the evidence in reference to the matters stated in them; they were the 12th and 13th counts.

12. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the district aforesaid, within the limits of the United States, and within the jurisdiction of the United States and of this court, with force and arms, was knowingly concerned in the fitting out of a certain vessel called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel be employed in the service of a foreign people, that is to say, in the service of "the United Provinces of Rio de la Plata," to commit hostilities against the subjects of a foreign prince, that is to say, against the subjects of "his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil," with whom the United States then were, and still are, at peace; against the form of the act of congress in such case made and provided, and against the peace, government and dignity of the United States.

13. And the jurors aforesaid, upon their oath aforesaid, do further pre-

sent, that the said John D. Quincy, on the day and year aforesaid, at the district aforesaid, within the limits of the United States, and within the jurisdiction of the United States and of this court, with force and arms, was knowingly concerned in the fitting out a certain other vessel, called the Bolivar, otherwise called Las Damas Argentinas, with intent that the said vessel should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign prince, that is to say, against the subjects and property of his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were, and still are, at peace; against the form of the act of congress in such case made and provided, and against the peace, government and dignity of the United States.

*448] *The defendant pleaded not guilty, and the cause came on to be tried before the circuit court, on the 8th day of April 1830. On the part of the United States, evidence was given of the repairing and fitting out of the schooner Bolivar, in the port of Baltimore, in 1827. That she was originally a Maryland pilot-boat of sixty or seventy tons. The work was done at the request of Henry Armstrong and of the defendant, who superintended the same; that she was fitted with sails and masts larger than those required for a merchant vessel, and was altered in a manner to suit her carrying passengers, and with a port for a gun. This evidence on the part of the United States was intended to apply to the twelfth and thirteenth counts in the indictment, and to sustain the allegations therein. It was in proof, that the Bolivar sailed from Baltimore for St. Thomas, on the 27th September 1827, having on board provisions, thirty-two water casks, one gun-carriage and slide, a box of muskets and thirteen kegs of gunpowder; and after a bond had been given by John M. Patterson, as master, and George Stiles and Victor Valette, of Baltimore, as owners, not to commit hostilities against the subjects or property of any prince or state, or of any colony, district or people with whom the United States were at peace. After her arrival at St. Thomas, Armstrong had no funds, and was uncertain whether he could get funds; at St. Thomas, she was fitted as a privateer and sailed to St. Eustatius, having changed her name to Las Damas Argentinas; the defendant was her captain during the subsequent cruise. Armstrong was on board, not as an officer, but as an owner, and as agent for the other owners; on the voyage from Baltimore, he told a witness, that if the vessel went privateering, it would be under the Buenos Ayrean flag; and that he had procured a commission for the Bolivar, from an agent of the Buenos Ayrean government, at Washington, for $800. A witness testified that he conversed with Armstrong about going to the West Indies, that the latter told him, it was his intention, or rather his wish, to employ the Bolivar as a privateer; but he had no funds to fit her out as such, and could not tell, until he got to the West Indies, what he might ultimately do.

*449] Armstrong wanted witness, in Baltimore, to advance some *funds, and told him he would be glad, if witness would go as surgeon. He spoke of the difficulty of getting funds, both in Baltimore and in the West Indies. The witness knew that Armstrong had no funds, when he arrived in the West Indies, and was two or three days negotiating with Cabot & Co., of St. Thomas, and was uncertain of there getting funds. From St.

Eustatius, the vessel proceeded, under the Buenos Ayrean flag, and captured several vessels, Portuguese, Brazilian and Spanish; which were ordered, in consequence of the blockade of the Rio de la Plata, to the West Indies, in pursuance of instructions from the government of Buenos Ayres. The cruise terminated on the 1st of March 1828; one prize and cargo produced $35,000, which was distributed among the crew.

It was admitted, that before the year 1827, the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation, by the executive department of the government of the United States.

The defendant moved the circuit court for their opinion and direction to the jury:

1. That if the jury believe, that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed, or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the traverser.

2. That if the jury believe, that when the Bolivar was fitted and equipped at Baltimore, the owner and equipper intended to go to the West Indies, in search of funds with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies, to endeavor to raise funds to prepare her for a cruise, then the traverser is not guilty.

3. That if the jury believe, that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfilment of which wish depended on his ability to obtain funds in the West Indies, for the purpose of arming and preparing her for war, then the traverser is not guilty.

*4. That according to the evidence in this cause, the United Provinces of Rio de la Plata is, and was at the time of the offence [*450 alleged in the indictment, a government acknowledged by the United States; and that the United Provinces of Rio de la Plata is, and then was, a state, and not a people, within the meaning of the act of congress under which the traverser is indicted; the word "people" in that act being intended to describe communities under an existing government, not recognised by the United States; and that the indictment, therefore, cannot be supported on this evidence.

The district-attorney of the United States moved the court for their opinion and direction to the jury:

1. That if the jury find from the evidence, that the traverser was, within the district of Maryland, knowingly concerned in the fitting out of the privateer Bolivar, *alias* Las Damas Argentinas, with intent that such vessel should be employed in the service of the United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilities, against the subjects, or against the subjects and property, of his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States were at peace, then the traverser has been guilty of a violation of the third section of the act of congress of the 20th of April 1818, which punishes certain offences against the United States; although the jury should further find, that the equipments of the said privateer were not complete, within the United States, and that the cruise did not actually

commence, until men were recruited, and further equipments were made, at the island of St. Thomas, in the West Indies ; and should further find, that the Bolivar, on her voyage from Baltimore to St. Thomas, had no large gun, no flints, nor any canon or musket balls, and that the muskets and sabres were, during the voyage, nailed up in boxes.

2. That if the jury find from the evidence, that the traverser was, within the district of Maryland, knowingly concerned in the fitting out of the privateer Bolivar, *alias* Las Damas Argentinas, with intent that such vessel should be employed in the service of the United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilities, against the
*451] subjects, or against the subjects and property, of his Imperial *Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were at peace, then the traverser has been guilty of a violation of the third section of the act of congress of the 20th of April 1818, which punishes certain crimes against the United States; although the jury should further find, that the intention so to employ the said vessel was liable to be defeated by a failure to procure funds in the West Indies, where further equipments were intended and required to be made, before actually commencing the contemplated cruise.

3. That if the jury find from the evidence, that the traverser was, within the district of Maryland, knowingly concerned in the fitting out of the privateer Bolivar, *alias* Las Damas Argentinas, with intent that such vessel should be employed in the service of the United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilies against the subjects, or against the subjects and property, of his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were at peace, then the traverser has been guilty of a violation of the third section of the act of congress of the 20th of April 1818, which punishes certain crimes against the United States ; although the jury should further find, that the fulfilment of the intention so to employ the said vessel would have been defeated, if further funds had not been obtained in the West Indies, where further equipments were intended and required to be made, before actually commencing the contemplated cruise.

4. That the 12th and 13th counts in the indictment are good and sufficient in law, whereon to found a conviction, notwithstanding the employment therein of the words "in the service of a foreign people, that is to say," preceding the words "in the service of the United Provinces of Rio de la Plata."

Upon the aforesaid prayers, and upon each of them, the judges were opposed in opinion ; and thereupon, the court ordered the same to be certified to the supreme court of the United States.

The case was argued by *Williams*, for the United States ; and by *Wirt*, for the defendant.

Williams, for the United States, contended, in support *of their
*452] first prayer, that the guilty intention having been proved to have existed in the mind of the traverser, in the United States, and the guilty enterprise having actually commenced there, the traverser is guilty of a violation of the third section of the act of the 20th of April 1818 ; although the

equipments were not completed in the United States, and although the cruise was not commenced, nor the Bolivar prepared to commence her cruise, until after her arrival in St. Thomas. The section in question punishes the fitting out and arming; the attempting to fit out and arm; the procuring to be fitted out and armed; and with a view to comprehend all who shall have any participation in disturbing the neutral relations of the United States, it punishes those who shall be knowingly concerned in the furnishing, fitting out, or arming, any ship or vessel, with intent, &c. The offence charged here is for being knowingly concerned in fitting out, &c. The Bolivar was, in fact, not only fitted out in the port of Baltimore, but was partially armed; having on board muskets, sabres, powder, and a gun-carriage, and a commission to cruise.

If it be necessary for the completion of the offence, that the vessel should not only be fitted out, but also armed, it is manifest, that this important act of congress, required by the laws of nations, and essential to preserve the peace of this country with foreign nations, will become a dead letter. For it is not only easy to evade its provisions, but, at least, equally convenient to do so, by having some additional equipments, however inconsiderable, to be effected abroad. This position admits, that the attempt to fit out and arm, however small the progress therein, is an offence; while the complete fitting out, having a commission on board, with the most flagrant intention to privateer, is no infringement of the act. The slightest augmentation to an armed vessel is, undeniably, an offence under the fifth section. The policy and scope of this whole law, so far from restraining the express terms used in this section, afford the strongest aid towards a literal construction of those terms. The 12th and 13th counts of this indictment, and the first prayer, are drawn in the very words of the third section *of the act in question. And if these counts and this prayer are not sustained, it must be on the ground, that the act ought to be interpreted differently from its obvious and literal meaning. [*453

The reason for a strained interpretation, which will have the effect to defeat and repeal this wholesome statute, will scarcely prevail with this court. And the authorities will be found to overthrow such an interpretation, and to support that which is insisted on by the prosecution. The exact and faithful discharge of the duties which a neutral position imposes upon governments, is among the highest and most important of all national duties. Honor and interest concur in making it especially binding on our own government; and while this conduct has in a very great degree promoted the prosperity of this country, it has placed the policy and character of the nation in a high and elevated position in the estimation of other powers.

In the third circuit and Pennsylvania district, a decision was made upon the words on which this indictment is drawn; and it was there decided, in the case of the *United States* v. *Guinet*, 2 Dall. 321, "that the converting a ship from her original destination, with intent to commit hostilities; or, in other words, converting a merchant-ship into a vessel of war, must be deemed an original outfit, for the act would otherwise become nugatory and inoperative; it is the conversion from her peaceable use to the warlike purpose, that constitutes the offence." And in this case, far less advance towards arming was made than in the case of the Bolivar. Besides that,

the privateer "Les Jameaux" never actually proceeded on a cruise, and yet Guinet was convicted. Whereas, in the case at bar, the Bolivar, having actually performed her cruise, and made captures of vessels and property of nations with whom the United States were at peace, no room is left for doubting the object of her outfit in the port of Baltimore. In the *Case of Needham et al.*, Pet. C. C. 487, the same principle was decided. See also, *United States* v. *Grassin*, 3 W. C. C. 65; 1 Kent's Com. 114.

The decisions of this court on the acts prohibiting the slave-trade, furnish cases strikingly analogous to the one now under argument. *The
*454] expressions used in these acts seem, indeed, to require a more complete development and fulfilment of intention than the neutrality acts. In the last slave-trade act, which passed at the same session as the act upon which this indictment is framed, it is provided, that, "if any ship or vessel shall be built, fitted out, equipped, laden, or otherwise prepared, for the purpose of procuring any negro," &c., "such ship," &c., "shall be forfeited." *The Emily and Caroline*, 9 Wheat. 388; *The Plattsburg*, 10 Ibid. 141; *United States* v. *Gooding*, 12 Ibid. 471, 473; *The Alexander*, 3 Mason 177; 1 Dods. 81, were cited. Chief Justice MARSHALL says, in giving the opinion of this court, in 5 Wheat. 95, "That although penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which these words, in their ordinary acceptation, or in the sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ; where there is no ambiguity in the words, there is no room for construction." See also, opinion of Justice STORY, 2 Pet. 262.

In support of the second point, it was insisted, that the intention, coupled with acts tending to the accomplishment of the object, constitutes the offence, under this statute. For no otherwise could our neutral relations be preserved with nations belligerent towards each other. And in the description of the offence, it differs from many common-law offences, such as robbery, murder, &c. And it is not necessary the criminal intent should be accomplished, in order to subject the party to conviction and punishment. As analogous, see the cases in larceny, where carrying away is essential to the offence; Arch. Pl. & Ev. 127, and the authorities there cited; and 2 Russ. Cr. L. 1034, where, among other similar decisions, the twelve judges of England held, "that the removal of a parcel from the head to the tail of a wagon, with intent to steal it, was a sufficient asportation, to constitute larceny."

*455] In favor of the third point, it was contended, that the acts *given in evidence, in this case, so far consummated the offence, that no *locus pœnitentiæ* remained for the traverser, after leaving the port of Baltimore. The criminal intent, and the acts consequent thereon, have been conjoined in this case, so that there can be neither a divorce nor a purification, by a possible, or even a probable, failure of continued and successful support. All human enterprises are subject to contingencies. The death of the actors, the shipwreck of the vessel, &c., are among the casualties to which every maritime adventure is exposed. These may be supposed as much to enter into the calculation of those who engage in such adventures,

as the uncertainty about the requisite funds influenced the mind of the traverser in this case. If the traverser was innocent, because his guilty enterprise might have been defeated, or would have been defeated, if the requisite funds had been withheld; how can any one ever be guilty, since some contingencies must be inseparable from every enterprise? Here, unfortunately for the traverser's case—and what illustrates the extravagance of this part of the defence—the contingency turned up favorable for the adventure. And that which commenced in Baltimore was uninterruptedly prosecuted to the close of a successful cruise. 2 East's P. C. 557; 2 Russ. C. L. 991, 1036.

In support of the fourth point, the counsel for the United States contended, that the word "people" was descriptive of an independent government, acknowledged by the United States, as the word is used in this act. This word has no technical meaning, for which it invariably stands, and to which courts are obliged, as in technical words, always to annex the same ideas, as, *e. g.*, the words "felonious, traitorous," &c. Nor is this word used in this act, in opposition, or made to have a more limited meaning than ordinary, by reason of being placed in connection with other words, by which its general and usual meaning could be affected. There is nothing in the context here, to indicate the legislative intention that this word was to be understood in any other than its ordinary or vernacular sense. *If there be anything remarkable in the use made of the word "people," in this government and country, it is in its enlarged, rather than its restricted, sense. And it cannot be shown, by examples, that congress ever use it in a narrow interpretation. The largest state in the confederation uses the word as descriptive of its corporate character: "The People of New York." But the meaning of this word must be ascertained by reference to standard authorities; and Johnson, Crabb's Synonymes, were referred to. The traverser's counsel, in asking the court to support his fourth prayer, upon the ground, that the "Provinces of Rio de la Plata" were not a people, because they had been acknowledged by the government of the United States, thereby to overthrow this indictment, makes a demand, founded only on a gratuitous hypothesis, and deriving no support, either from authority or popular usage. A wholesome rule for the construction of words used in criminal as well as in civil cases, will be found in 1 Chitty Cr. L. 172, laid down by Lord Ellenborough. "Except in particular cases, where precise technical expressions are required to be used, there is no rule that other words shall be employed than such as are in ordinary use, or that in indictments or other pleadings, a different sense is to be put upon them, than what they bear in ordinary acception," &c. [*456

Wirt, for the defendant.—The only two counts in the indictment for the consideration or the court, are the 12th and 13th; which are founded on the act of congress of 1818, for the punishment of certain crimes. The difference between the counts is in the manner of laying the intent charged to the defendant; the 12th charges that the defendant with the intent that such vessel "be" employed; the thirteenth, with intent that such vessel "should be" employed. The prayers of the traverser are founded on the evidence; and they called upon the court to say, whether, on the hypothesis that the jury should believe certain facts which his counsel considered as

fairly deducible from the evidence, there had been any violation of the statute on which the indictment is founded.

*457] *The statute is one of a peculiar character, growing out of peculiar circumstances, and directed to a peculiar object, connected with our neutral rights, on the one hand, and some neutral obligations on the other, which distinguish it from the slave act, and the other act of congress with which the argument for the United States has sought to confound it. It demands a construction of its own; which it is for the first time to receive in this court.

The course of argument proper to be pursued, is, first, to examine the act upon its own construction; and second, to show the substantial difference between its provisions and those of the slave and other acts with which it has been so confounded.

1. To examine the act on its own construction. The object of all construction is to arrive at the intention of the legislature. The direct mode of doing this, is by looking at the language of the law; but there are other auxiliary modes of arriving at this intention, to which courts also resort for the purpose. One of the most familiar rules for interpreting statutes is to refer to the old law, the mischief and the remedy—that is, to look to the history of the act; the cause which produced it; and the precise object which it was intended to attain. *Preston* v. *Browder*, 1 Wheat. 115. For this salutary purpose, and with this legitimate object, the court will permit a reference to the history and peculiar circumstances which produced the act of congress now under consideration.

This act, as is well known to the court, is only a transcript of the act of 1794, so far as this prosecution is concerned. The act of 1794 was produced by an attempt on the part of M. Genet, the minister of France, to take advantage of the intense sympathies of this country in behalf of revolutionary France, to involve the United States in the war between that country and Great Britain, and the powers allied with her against France. This was the mischief which produced the statute; and it is necessary that the court should have a precise view of this mischief, in order to measure the corresponding remedy in the statute. They are referred, for the circumstances under which the statute was passed, to 5 Marshall's Life of

*458] Washington, *409–11, 427–8, 430–33, 441–3; Message of the President, Dec. 3d, 1793, 1 State Papers, 39–40; Proclamation of Neutrality, 1 State Papers, 44–46. All that was required by the government, and the whole purpose of the law, was, to preserve our neutral relations, as enjoined by the law of nations; and as the rules and regulations which had been prescribed by President Washington in the proclamation, had been declared to go all the length of our neutral obligations, why should it be supposed, that congress intended to go further, to the unnecessary and extreme prejudice of the American trade? The mischief had been, the arming and equipping vessels in our ports, and sallying out thence, in warlike array, to cruise and commit hostilities on foreign nations, with which we were at peace; that was the mischief; and why should the remedy be more extensive? It was declared in the instructions, that a vessel whose equipments were so equivocal as to be applicable either to commerce or war, was not a proper object of seizure or molestation. No obligation of neutrality required us to disturb her; while a just regard to the rights of

neutral trade required, that she should be left at liberty to pursue her own course, free from molestation. It is now insisted, on the part of the traverser in this case, that the act under consideration, with this light of its history collected upon it, is manifestly intended to cover no more ground than the executive rules and regulations which have been referred to.

Having thus brought the history of the act to aid in its construction, the rule that penal statutes shall be interpreted strictly, is invoked, to aid in the further consideration of the application of the law to the case made out by the United States on the testimony. A careful scrutiny of the language of this act, following, as it did, close on the proclamation of President Washington, and adverting to the views and purposes of its enactment, as shown by its history, will satisfy the court, that the position assumed for the traverser is fully sustained. The offence to be punished was the fitting out "and" arming any ship or vessel, within the ports of the United States, intended to be employed in hostilities against the subjects of any foreign state in amity with us. *The meaning of the terms "fitting out and arming," is, that the vessel shall be both fitted out "and armed," [*459 and to be so fitted out and armed, as to be placed in a condition to commit hostilities. The whole of the purpose of the law was this, and the vessel was to be completely fitted out and armed in our own ports, and was to be put in a condition, and with a capacity to commit hostilities immediately. Nothing else, and nothing less than this, was the purpose of the law. Between the attempt to fit out and arm, and the fitting out and arming, there is a wide and important difference. To fit out and arm, is to do the thing completely; to attempt to fit out and arm, means that the party has begun it, but has been prevented accomplishing the purpose, by the interference of the government. He has all the guilt of the intention, because his intention was to fit out and arm completely in our ports, in violation of the act. It is, therefore, incumbent on the prosecution to prove, that the object of the traverser was to fit out and arm completely; and in all respects to place in a state for immediate hostilities, the vessel referred to in the indictment.

The argument submitted to the court is, that the third section of the act on which the indictment is founded makes the offence to consist in fitting out and arming, which is an entire act; and requires the vessel to be placed in a posture for war, in a condition to commit immediate hostilities, before the offence is completed—such being the only rational meaning of the words of the statute. That if the indictment charges the attempt, the charge must not be of an attempt to fit out merely, but of an attempt to fit out and arm; that if it charge a procurement, the charge must not be that the accused procured the vessel to be fitted out merely, but that he procured her to be fitted out and armed. In these three descriptions, the law is looking at the prime actor, for he is described as the person who fits out and arms; or attempts to fit out and arm; or procures to be fitted out and armed: he is the actor or the procurer.

With regard to the principal or prime actor, it is not said, if he knowingly does the thing (for knowledge is involved in the very description of the offence), but the language of the law as to those who were concerned in furnishing any of the materials is different; this must have been done knowingly. *With respect to those persons, their participation is manifestly of an accessorial character; they are not, indeed, called [*460

accessories, but the language in which the agency is described, construed with that in which the operations of the principal are described, manifests that the legislature was looking at them in an accessorial light. There is, then, in a fair construction of the law, a principal in the offence, and an accessory. But the offence must have been committed; there must have been a fitting out "and" arming, or an attempt to fit out and arm, or the principal actor has been guilty of no offence; and it could not have been intended to punish the secondary or accessorial actor, if the principal actor has not been guilty of an offence. This would be the case, if to attempt to fit out, not being an offence, any one had, knowingly, furnished articles to the vessel, to be used for that purpose; and yet, if, before the complete fitting out and arming had been accomplished, the vessel had been seized, and this consummation prevented, the prime actor would not have been indictable under the law. Thus, the part of a transaction becomes a crime in one citizen, while the whole of it is not a crime in another. The construction on the other side is, that the law meant to punish, not merely the consummation of the act, the fitting out and arming, but every step that is taken towards it; so that the fitting out, *per se*, becomes an offence—is a crime, without arming. But if this had been the intention of congress, the copulation "and" would have found no place in the description; the language of the law would have been "fit out *or* arm," and attempt to fit out *or* arm. The following cases were cited and commented upon: 1 Wheat. 121; 5 Ibid. 76, 94; 1 Gallis. 114; 1 Paine 32; 2 Wheat. 119; 3 Dall. 328; Case of Smith and Ogden, Pamph. 240; Pet. C. C. 487; 9 Wheat. 389; 10 Ibid. 141; 12 Ibid. 472.

The intent charged against a defendant under the act, should be a fixed and positive intent, not in any manner contingent. The vessel, in this case, was in a condition to be considered as going out as a commercial vessel; she had no crew for war, no muskets, no ammunition. The offence must be consummated within the United States, and the intent is not to be collected from what occurred afterwards. *The evidence shows, that until *461] the vessel arrived at St. Thomas, the purpose of privateering was uncertain. It depended, for its accomplishment, on the receipt of funds there, and for some time this was uncertain. If the vessel had been sold, on her arrival in the West Indies, most certainly, the defendant could not be found guilty. The intention, in cases of larceny, is not like this; in those cases, where a slight asportation has taken place, it is sufficient to constitute the offence; but there the act is complete by such removal.

The objection to calling the government of Rio de la Plata "a people" is purely technical, growing out of the case of *Gelston* v. *Hoyt*. This related to the situation of Petion and Christophe, in St. Domingo; and the court, in that case, said, neither could be considered a state. The word "people" applies to a community in the course of revolution, and not yet settled down. But this was not the situation of Buenos Ayres; it was a state, and should have been so described. The object of the law was, to include political communities of every denomination. The court cannot know but that there may be a people called Buenos Ayres; a reference to particulars would not cure the defect. Buenos Ayres, being a state, should have been so denominated.

Williams, in reply.—The Bolivar did not sail from the United States as a merchant vessel, for she had no cargo; nor was there ever produced any account of sales of an outward cargo. She carried out nothing but provisions for a privateer's crew, and munitions of war. The whole invoice cost only $687.81; whereas, she was advertised by the traverser to be a vessel capable of carrying from four to five hundred barrels.

At the time when the first neutrality act was passed (1794), the unjustifiable acts consisted in not only fitting out, but also in arming; and therefore, this description of the offence in the act, as well as in the correspondence of the executive department, becomes the most prominent. But the act would have been soon found to be wholly inefficient, if more ample provisions had not been enacted. If, in Genet's time, he had set on foot the fitting out of privateers from this country, to be *armed in the West Indies, can it be doubted, that our government would have denounced this practice, as contrary to our neutrality and the laws of nations? [*462

The case in 2 Wheat. 119, relating to the transportation of oxen across the line, favors our construction. There, it was attempted, for the United States, to bring a case within the operation of a penal law, which the letter of the law did not cover. Here, the indictment, and the act on which it is drawn, comprehend, in their letter and spirit, the very case of the traverser.

The fourth class of offences in the third section is not confined to accessorial participators, but is calculated and intended to comprehend all parties concerned in fitting out "or" in arming. The argument on the part of the traverser requires words to be interpolated into the law; and contradicts the rule, that an indictment, drawn in the words of the act, is sufficient. For if the arming, as well as fitting out, must be proved, so also ought it to be averred in the indictment.

The slave-trade acts are, manifestly, analogous to the neutrality acts; and the mischiefs of the former trade are not greater than those which flow from violating the latter acts. For, to the lawless practice of privateering, may be ascribed the growing prevalence of piracy.

THOMPSON, Justice, delivered the opinion of the court.—This case comes up from the circuit court of the United States for the Maryland district, on a division of opinion of the judges, upon certain instructions prayed for to the jury.

The indictment upon which the defendant was put upon his trial, contains a number of counts, to which the testimony did not apply, and which are not now drawn in question. The 12th and 13th are the only counts to which the evidence applied; and the offence charged in each of these is substantially the same, to wit, that the said John D. Quincy, on the 31st day of December 1828, at the district of Maryland, &c., with force and arms, was knowingly concerned in the fitting out of a certain vessel called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, to *commit hostilities against the subjects of a foreign prince, that is to say, against the subjects of his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were, and still are, [*463

at peace; against the form of the act of congress in such case made and provided.

The act of congress under which the idictment was found (2 U. S. Stat. 448, § 3) declares, "that if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, &c., every person so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years," &c.

The testimony being closed, several prayers, both on the part of the United States and of the defendant, were presented to the court for their opinion and direction to the jury; upon which the opinions of the judges were opposed, and which will now be noticed in the order in which they were made.

On the part of the defendant, the court was requested to charge the jury, that if they believe, that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed, nor at all prepared for war, nor in a condition to commit hostilities, the verdict must be for the defendant. The prayer on the part of the United States, upon this part of the case, was, in substance, that if the jury find from the evidence, that the defendant was, within the district of Maryland, knowingly concerned in the fitting out the privateer Bolivar, with intent that she should be employed in the manner alleged in the indictment, then the defendant was guilty of the offence charged against him, although the jury should find, that the equipments of the said privateer were not complete, within the United States, and that the cruise did not *actually commence, until men were recruited, and further equip- [*464]
ments were made, at the island of St. Thomas, in the West Indies. The instruction which ought to be given to the jury, under these prayers, involves the construction of the act of congress, touching the extent to which the preparation of the vessel for cruising or committing hostilities must be carried, before she leaves the limits of the United States, in order to bring the case within the act.

On the part of the defendant, it is contended, that the vessel must be fitted out "and" armed, if not complete, so far, at least, as to be prepared for war, or in a condition to commit hostilities. We do not think this is the true construction of the act. It has been argued, that although the offence created by the act is a misdemeanor, and there cannot, legally speaking, be principal and accessory, yet the act evidently contemplates two distinct classes of offenders. The principal actors, who are directly engaged in preparing the vessel, and another class who, though not the chief actors, are in some way concerned in the preparation. The act, in this respect, may not be drawn with very great perspicuity. But should the view taken of it by the defendant's counsel be deemed correct (which, however, we do not admit), it is not perceived, how it can affect the present case. For the indict-

ment, according to this construction, places the defendant in the secondary class of offenders. He is only charged with being knowingly concerned in the fitting out the vessel, with intent that she should be employed, &c. To bring him within the words of the act, it is not necessary to charge him with being concerned in fitting out "and" arming. The words of the act are, fitting out "or" arming; either will constitute the offence. But it is said, such fitting out must be of a vessel armed, and in a condition to commit hostilities, otherwise, the minor actor may be guilty, when the greater would not; for, as to the latter, there must be a fitting out "and" arming, in order to bring him within the law. If this construction of the act be well founded, the indictment ought to charge, that the defendant was concerned in fitting out the Bolivar, being a vessel fitted out and armed, &c. But this, we apprehend, is not required. It would be going beyond *the plain meaning of the words used in defining the offence. It is sufficient, if [*465 the indictment charges the offence in the words of the act; and it cannot be necessary to prove what is not charged. It is true, that with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary, that they should be charged with fitting out "and" arming. These words may require that both should concur; and the vessel be put in a condition to commit hostilities, in order to bring her within the law. But an attempt to fit out "and" arm is made an offence; this is certainly doing something short of a complete fitting out and arming. To attempt to do an act does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it; any effort or endeavor to effect it, will satisfy the terms of the law.

This varied phraseology in the law was probably employed with a view to embrace all persons, of every description, who might be engaged, directly or indirectly, in preparing vessels, with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged. Hence, the great latitude given to the courts in affixing the punishment, viz., a fine not more than ten thousand dollars, and imprisonment not more than three years. We are, accordingly, of opinion, that it is not necessary that the jury should believe or find, that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offence charged in the indictment. The first instruction, therefore, prayed on the part of the defendant must be denied, and that on the part of the United States given.

The second and third instructions asked on the part of the defendant, were: That if the jury believe, that when the Bolivar was fitted and equipped at Baltimore, the owner and equipper intended to go to the West Indies, in search of funds, with which to arm and equip the said vessel, and had no present intention *of using or employing the said vessel as a [*466 privateer, but intended, when he equipped her, to go to the West Indies, to endeavor to raise funds to prepare her for a cruise, then the defendant is not guilty. Or, if the jury believe, that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to

employ her, the fulfilment of which wish depended on his ability to obtain funds in the West Indies, for the purpose of arming and preparing her for war, then the defendant is not guilty.

We think these instructions ought to be given. The offence consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States; and it is equally necessary, that the intention, with respect to the employment of the vessel, should be formed, before she leaves the United States. And this must be a fixed intention; not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn; and decides whether the adventure is of a commercial or warlike character.

The law does not prohibit armed vessels, belonging to citizens of the United States, from sailing out of our ports; it only requires the owners to give security (as was done in the present case) that such vessels shall not be employed by them to commit hostilitied agoinst foreign powers at peace with the United States.[1] The collectors are not authorized to detain vessels,

[1] In the case of General Quitman, it was decided, in the circuit court for the eastern district of Louisiana, in July 1854, that a federal judge might, on just grounds of suspicion, require security for the observance of the neutrality laws of the United States.

United States *v.* John A. Quitman.

Campbell, Justice.—This case originated in a requisition by the court, upon the defendant, to show cause why he should not give a bond to observe the laws of the United States, in reference to the preservation of their neutral and friendly relations with foreign powers, contained in 3 U. S. Stat. 447. The occasion for this requisition was a report of the grand jury, of which the following is an extract:

"The grand jury beg leave to report to your Honor that, in the discharge of the duty confided to them by the court, they have cited, from among their fellow-citizens, a number of persons as witnesses, to testify, and to prove from them, if possible, evidence in relation to the rumor in this city of an expedition, said to be on foot, the tendency and purpose of which would be to violate the neutrality laws of the United States. Among the witnesses cited were several whose names figured most prominently with the rumored expedition; and from the refusal of some of them to testify (as is known to the court), on the ground they could not do so, without criminating themselves, under the ruling of the court, the obvious inference left upon the minds of the grand jury was, that those rumors were not altogether without foundation; and from collateral evidence brought to their notice, in the course of the investigation, they are further left to infer, that meetings have been frequently held upon the subject of Cuban affairs, and that what are termed "Cuban bonds" have been issued, that funds have been collected, either by contribution, sale of these bonds, or promises to pay, to a very considerable amount, which was, or would be hereafter, at the disposal of whomsoever might be chosen to the command of an expedition purporting to be in aid of the Cuban revolutionists; but from a strict and searching investigation of the witnesses, through the district-attorney, the grand jury have been unable to elicit any facts upon which to found an indictment against any one. Although the grand jury strongly incline to the opinion, that these meetings and collections of funds have for their end the organization of an expedition, either for the purpose of assisting in a Cuban revolution, or of making a demonstration upon that island, yet the plan, whatever it may be, seems altogether in the prospective and, aware as we are, that a great deal has been said and written about the extensive and formidable preparations on foot for the purpose of revolutionizing Cuba, we believe, it has been very much overrated and magnified—nothing like a military organization or preparation having been brought to our notice."

At the time the report was made, the name of the defendant was returned, with others, who had declined to answer the interrogatories of the jury, and a printed statement of the facts which had occurred while he was before the jury has been filed. By that statement, it appears, that a printed circular, marked "private and confidential," signed by J. S. Thrasher, as "corresponding secretary" of an association, was handed to the witness, was examined by him,

although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable, that such vessels are intended to be employed by the owners to commit hostilities

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and he was asked for an account of the meetings and proceedings described in it. That the witness declined to give information, because his answers would criminate him. The printed circular referred to, is also filed. It discloses the facts of several meetings in New Orleans, for the purpose of considering upon the means of liberating Cuba from the government of Spain; that there is a junto which acts in the name of "Free Cuba" and represents its "aspirations;" that the junto has collected a large sum of money ($500,000), and holds intercourse with military men in the United States, relative to that object; that it issues bonds in the name and upon the pledge of the independent island and proposed government, and makes contracts with citizens of the United States, to be trustees and treasurers of the movement, and to take the military control of it. It contains the contract of a board of American trustees, to hold its money, and the declarations of an eminent military leader, who agrees to take the command of the expedition, when a million of dollars are collected. That the meetings are all in the design of fulfilling this requisition of this leader, whose name is not given. The bonds are issued to the subscribers at one-third their par value, and the military leader is pledged, should the expedition prove successful, to employ his influence to procure their assumption as a public debt of "Free Cuba." The circular discloses the fact, that Cuba is in no condition to effect her own liberation; that the strength of the government and the vigilance of its police, exposes every revolutionary movement in the island to defeat.

The whole plan is addressed to citizens of the United States, and is for their execution. The military chief, selected from the United States, is the soul of the enterprise. The defendant is known to be an accomplished soldier, having a large share of the public confidence, and especially, of those states which border on the gulf of Mexico. The report of the grand jury is, "that his name has figured prominently with the rumored expedition," and for that reason, he was cited to afford evidence "in relation to the rumor in this city, of an expedition, the tendency and purpose of which would be to violate the neutrality laws of the United States." The circular I have described was handed to the defendant, and was inspected by him, and it contains a description of a person and the report of a speech, which, perhaps, might be attributed to the defendant, without great injustice, whenever the fact is ascertained that he would consent to implicate himself in an enterprise like that set forth. The defendant confessed the fact of a connection of a kind which rendered it a matter of impropriety for the grand jury to press any question upon him relative to the details of the movement. "The obvious inference," says the grand jury, "is, that these rumors were not altogether without foundation," and they find from other evidence, that an expedition is on foot, "for the purpose of assisting a Cuban revolution, or of making a demonstration upon the island."

The questions presented to the court are, is there a reasonable ground for the belief, that the defendant is connected with the preparation of such an enterprise? Does the existence of such a suspicion impose a duty upon the court?

The defendant contends, that I have no right to rest any proceeding upon the inference of the grand jury, or to deduce any conclusion unfavorable to him from this conduct. The constitution of the United States does not allow the examination of a witness in any criminal case against himself, except with his consent. The common law of evidence extends the exemption, and he is not required to answer in any case, either as a witness or a party, the effect of which answer might be to implicate him in a crime or misdemeanor, or subject him to a forfeiture. Burr's Case, 1 Rob. (La.) 242; Cloyes *v.* Hayes, 3 Hill 564. This privilege belongs exclusively to the witness. The party to the suit cannot claim its exercise, nor object to its waiver by the witness. 2 Russ. Cr. 929; People *v.* Abbot, 19 Wend. 195. The witness asserts this privilege on oath. The assertion is direct and positive, that his answer will implicate him in a prosecution or forfeiture, and the court accepts his declaration, without an inquiry as to what his answer will be. The inquiry of the court is, may the answer be such that it can be used as evidence against him? If the witness claims the privilege, falsely and corruptly, he is guilty of perjury, and if, by his falsehood, he deprives a party of the benefit of necessary testimony, he is answerable for the damage he occasions, in a civil action. Poole *v.* Perritt, 1 Spears (S. C.) 128; Warner *v.* Lucas, 10 Ohio 336. The profound author of the "Treatise on Judicial Evidence" inquires, whether, if all the criminals of every class had assembled and framed a system, after their own wishes, is not this rule the very first which they would have established? Innocence can have no advantage

against some foreign power, at peace with the United States. All the latitude, therefore, necessary for commercial purposes, is given to our citizens; and they are restrained only from such acts as are calculated to involve the country in war.

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from it; innocence claims the right of speaking, must speak, while guilt alone invokes the security from silence. The supreme court of Ohio say, in the case last cited, "for a witness to refuse to testify, because his testimony may criminate him, is at once to pronounce his turpitude. Not one man in a thousand would, without reason, venture upon so perilous a situation!"

It was, for a time, supposed, that questions addressed to a witness, tending to criminate him, could not be propounded. This notion has been discarded, and the witness is driven to plead his exemption. When this plea is made, in the case of third persons, no inference can be drawn, unfavorable to the parties to the action. The plea is not theirs, and their suit should not be affected by the act of a stranger. 2 Stark. 157–8; 1 R. & M. 382, note. Though this doctrine is impugned by high authority. 2 Russ. 939; 1 R. & M. 382, note. The case before me is not this case. The grand jury, representing the United States, were taking an inquisition of the crimes against their authority, and were entitled to the information which their fellow-citizens had. They have ascertained the existence of acts in violation of law. The defendant excuses himself from affording information he possesses, because his relations to those acts are such that his answers would criminate him. He has conducted himself so that an ordinary, but a most important, duty cannot be fulfilled. It is my duty to afford the defendant every exemption that the laws have conferred. The constitutional exemption originated in the righteous abhorrence of our ancestors for the proceeding of those tribunals of the continent of Europe, where the rack and torture wrung from the accused, in the agony of their pain, words admitting guilt. I do not compel the defendant to answer.

It is said, that drawing a conclusion unfavorable to the defendant's innocence, from his refusal to answer, is equivalent to compelling a confession. The objection is specious, but without any application to the case in which it is preferred. The requisition upon the defendant involves no criminal prosecution nor charge of guilt, nor is the requisition a punishment. In the times of the Saxon constitution, every subject of England was held to give securities for his good behavior, who were to produce him to answer every legal charge; and if he did wrong, and escaped, to bear what he ought to have borne. 1 Spence's Inquiry 352–3. Blackstone describes this as a preventive justice, "applicable to those as to whom there is a probable ground to suspect of future misbehavior." That the precaution spoken of is intended merely for *prevention*, without any crime actually committed by the party, but arising only from a *probable suspicion* that some crime is intended, or likely to happen, and consequently, is not meant as any degree of punishment. 4 Bl. Com. 252; 1 T. R. 696, 700.

The statute of Edw. III. defined the powers of magistrates in the exercise of this jurisdiction. That statute invested justices with authority to take and arrest all those that they may find by indictment, or by suspicion, and put them in prison, and "to take of all that be not of *good fame*, where they shall be found, sufficient surety and mainprize of their good behavior;" to the intent that the people be not by such rioters troubled, nor endangered, nor the peace blemished." The interpretations of this statute comprehend all whom the magistrate shall have just cause to suspect to be dangerous, quarrelsome or scandalous. Hawkins P. C. b. 2, ch. 8, § 16. Dalton enumerated twenty classes of offenders who fall within it, including rioters, common quarrellers, such as lie in wait to rob, steal, make assaults, put passengers in fear, libellers, persons guilty of mischief to animals, and concludes, whatsoever act or thing is of itself a misdemeanor, is cause sufficient to bind such an offender to the good behavior. Dalton Just. 124.

The cases in which this jurisdiction has been exercised are numerous. A person who said "he would do everything in his power to annoy another, short of actual violence," was held to give surety, the court declaring "we should be poor guardians of the public peace, if we could not interfere, until an actual outrage had taken place, and perhaps, fatal consequences ensued." If a party inform the court, or a justice of the peace, that he goes in fear and in danger of personal violence, by reason of threats employed against him, and pray protection of the court, the court will grant it. 12 Ad. & E. 599. Nor will the defendant be allowed to controvert the facts or bring counter-evidence. 13 East 171. The whole rests on the principle, that this is not a criminal proceeding, nor designed as a punishment. 1 T. R. 700.

I have thus traced the nature and extent of this jurisdiction in England, for the reason that it is the model upon which the same jurisdic-

The second and third instructions asked on the part of the *United States ought also to be given. For if the jury shall find (as the instructions assume), that the defendant was knowingly concerned in fitting

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tion in Louisiana has been framed. Crimes, offences and misdemeanors are mentioned in her statutes, and the modes of proceeding and rules of evidence, are construed, intended and taken with reference to the common law of England, except as otherwise provided. Rev. Stat. 215. Justices are allowed to take sureties of the peace, when there is a just cause to apprehend, that a breach of the peace is intended. (Rev. Stat. 220, § 48.) The laws regulating the internal police of the state, under the title "vagrants, vagabonds and suspected persons" (Rev. Stat. 587, *et seq.*), confer a jurisdiction similar to that described by Hawkins and Dalton, under the statute of Edward III. Persons found under circumstances of suspicion, and whose conduct awakens apprehension for the security of property or of life, or for the maintenance of order or decorum, persons whose conduct jeopardizes the tranquillity of society, or the supremacy of the laws, are subject to arrest under these statutes, and may be held to security, or sentenced to the house of correction.

I find no words in any English statute or commission more broad and compretensive. It is true, that these statutes affect the loitering, idle, vagrant and pauper population, and seem to have been framed for that class. But the law is not a respecter of persons, and if the proud and powerful place themselves, by crime, in the ranks of the suspicious, or vagrant, the law does not regard their pride or power. The supreme court of Louisiana, at an early period, exercised the power in question, n a case of libel, and rested upon common-law authorities. Nugent's Case, 1 Mart. (La.) 103.

The authority of this court is derived from the act of congress of 1793. 1 U. S. Stat. 609. The judges of the supreme court, by that act, "have power and authority to hold to security of the peace, and for good behavior, in cases arising under the constitution and laws of the United States, as may or can be lawfully exercised by any judge or justice of the peace of the respective states, in cases cognisable before them." Crimes against the United States are ascertained from their statutes. These laws, like the laws of the states, are designed to secure the public peace and to promote domestic tranquillity. The powers granted to the justices of the supreme court extend only within the lim its of that department of the public order which has been committed to the oversight of the federal government. The assembly of a body of men, for the purpose of disturbing the peace of a city, or to invade private property, or to assail a particular person, would be an unlawful assembly or rout, or if followed by an unlawful act, a riot, under state laws; and first in the list of the offences described by Dalton and Burns, which fall within the remedial statutes, who have considered are those.

By the treaties of Spain, and by the neutrality laws, the United States have placed the territories of that kingdom under their protection against military and naval expeditions, or enterprises from their borders, or conducted by their citizens. They are in our peace; the attempt of a citizen to disturb that peace, by beginning or setting on foot, or providing means for a military or naval expedition, is a breach of the peace. The statute pronounces those acts to be misdemeanors. The most restricted construction of statutes which authorize the requirement of sureties for good behavior must comprehend the cases arising under this statute. The question now arises, under what circumstances, can this requisition be made? The authorities say, "that the justices have power to grant it, either by their own discretion, or upon the complaint of others; yet that they should not command it, but only upon sufficient cause seen to themselves, or upon the complaint of other very honest or credible persons." Hawkins and Blackstone define the discretion to be a legal discretion, to be put in exercise upon a just cause of suspicion. The facts disclosed in the report of the grand jury, with the explanatory evidence accompanying that report, leave me no room for hesitation or doubt.

I have set forth at large the reasons for the judgment I have given, that there may be no misconstruction nor mistake of the grounds upon which this court acted. I have explained in the charge addressed to the grand jury, my sense of the importance of the act of congress involved in this discussion, and my opinion of the policy in which it is founded. The honor of our country, the fair repute of its citizens, in my opinion, require an exact observance of that act. It is a law binding upon our whole people, and the principles which justify its violation, menace the order and repose of the whole confederacy. But if my opinions were the reverse of what they are, in the position I occupy, I have but a single duty to perform. To the full extent and no further, of the powers conferred upon me, I must enforce its execution.

The defendant has, before a portion of this court, declared his inability to fulfil the public

out the Bolivar, within the United States, with the intent that she should be employed as set forth in the indictment, that intention being defeated by what might afterwards take place in the West Indies would not purge the offence which was previously consummated. It is not necessary that the design or intention should be carried into execution in order to constitute the offence.

The last instruction or opinion asked on the part of the defendant was: That according to the evidence in the cause, the United Provinces of Rio de la Plata is, and was at the time of the offence alleged in the indictment, a government acknowledged by the United States, and thus was a "state," and not a "people" within the meaning of the act of congress under which the defendant is indicted; the word "people" in that act being intended to describe communities under an existing government, not recognised by the United States; and that the indictment, therefore, cannot be supported on this evidence.

The indictment charges that the defendant was concerned in fitting out the Bolivar, with intent that she should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence, that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation, by the executive department of the government of the United States, before the year 1827; and therefore, it is argued, that the word "people" is not properly applicable to that nation or power. The objection is one purely technical, and we think not well founded. The word "people," as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of congress to a foreign power. The words are, "in the service of any foreign prince or state, or of any colony, district or people." The application of the word people is rendered sufficiently certain by what follows under the *videlicet*, "that is to say, the United Provinces of Rio de la Plata." This particularizes that which, by the word *"people" is left too general. The descriptions are no way repugnant or inconsistent with each other, and may well stand together. That which comes under the *videlicet*. only serves to explain what is doubtful and obscure in the word "people." This instruction must, therefore, be denied, and the one asked on the part of the United States, viz., that the indictment is sufficient in law, must be given. These answers must, accordingly, be certified to the circuit court.

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This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Maryland, and on the points and questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this court for its opinion,

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duty of affording information of practices involving a breach of laws. That this inability arises from some undisclosed connection with those who are thus engaged. The president of the United States has admonished the country that there is danger of a violation of these important statutes, and the grand jury, after a patient investigation, certify that this admonition has a legitimate foundation. Public rumor has attached suspicion to the name of the defendant, according to the certificate. I will say with the chief justice of England, already quoted, "We should be poor guardians of the public peace, if we could not interfere, until an actual outrage had taken place, and perhaps, fatal consequences ensued."

agreeable to the act of congress in such case made and provided, and was argued by counsel: On consideration whereof, it is the opinion of this court, 1. That it is not necessary that the jury should believe or find, that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offence charged in the indictment; therefore, the first instruction prayed for on the part of the defendant, must be denied, and that on the part of the United States given. 2. That the second and third instructions asked for on the part of the defendant should be given. 3. That the second and third instructions asked for on the part of the United States should also be given. 4. That the fourth instruction asked for on the part of the defendant must be denied, and the one asked on the part of the United States, viz., that the indictment is sufficient in law, must be given.

It is, therefore, ordered and adjudged by this court, that it be certified to the said circuit court: 1. That it is not necessary that the jury should believe or find, that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit *hostilities, in order to find the defendant guilty of the offence charged in the [*469 indictment; therefore, the first instruction prayed on the part of the defendant must be denied, and that on the part of the United States given. 2. That the second and third instructions asked for on the part of the defendant should be given. 3. That the second and third instructions asked for on the part of the United States should also be given. 4. That the fourth instruction asked for on the part of the defendant must be denied; and the one asked on the part of the United States, viz., that the indictment is sufficient in law, must be given.

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*United States, Appellant, *v.* Joseph Nourse, Complainant. [*470

Appellate jurisdiction.—Treasury distress-warrant.

The agent of the treasury of the United States, under the provisions of the act of congress passed on the 15th of May 1820, entitled "an act for the better organization of the treasury department," issued a warrant to the marshal of the district of Columbia, under which the goods and chattels, lands and tenements of Joseph Nourse, late register of the treasury of the United States, were attached for the sum of $11,769.13, alleged to be due to the United States upon a settlement of his accounts at the treasury of the United States; Nourse, under the authority of the fourth section of that act, applied to the district judge of the district of Columbia, for an injunction to stay proceedings under the warrant, alleging that a balance was due to him by the United States, as commissions for the expenditure of large sums of money for the United States, and as a compensation for other duties than those of register of the treasury, in the disbursement of the said sums of money, to which commissions and compensation he claimed to be entitled, according, as he alleged, to the established practice, and by the application to his claims of the same rules which had been applied to other and similar cases in the adjustment of accounts at the treasury department; the district judge granted an injunction to stay proceedings under the warrant; and the United States having filed an answer to the bill of Nourse, auditors were appointed by the district judge to audit and settle the accounts of Nourse with the United States. The auditors reported the sum of $23,582.72 due to Nourse by the United States, for extra services rendered to the United States in receiving and disbursing public money; allowing credit in the audit of the accounts, of the sum of $11,769.13, claimed