

THE WAR ON THE CUBANS.

Examination of General Goicouria.

The Complaint Dismissed and the Accused Discharged.

The Cubans Enthusiastic Over the Result.

UNITED STATES COMMISSIONER'S COURT.

Before Commissioner Betts.

The United States vs. General Goicouria.—The examination in this case was resumed yesterday. The court room was densely crowded, several ladies being present.

Mr. Phelps appeared for the government and Mr. Lowrey for the defendant.

The first witness called was George W. Hall, agent for the Pennsylvania Iron Works, at No. 71 Broad way, who testified he met General Goicouria in the building, in the front office, on the second floor; saw other gentlemen there; did not know their names.

Q. Did you receive a check in payment for arms last month?

Mr. Lowrey objected, as he wished the examination to be confined to the defendant.

Examination resumed—Received a check for guns from William Gonzales, who was in the office; a Mr. Reed took them from his works in Chester, Pa.; a number of strangers were present at the time; met Gonzales several times since; his interviews with General Goicouria occurred first on the 16th of June at his office; Mr. Reed introduced him to the General; had a bill for presses at the time; handed him the bill, but did not ask him for payment; Mr. Reed introduced him to the General as the agent of the Pennsylvania Iron Works; the General told him the papers were out and the bill would be paid the next morning; called again on the General about the bill, and he said the parties were out; called again and the bill was paid; did not receive payment for other articles at the same place.

Mr. Charles H. Pond testified that he was a merchant, doing business at 179 Broadway; deals in articles pertaining to arms; did not know of any arms being delivered at his place of business; knew General Goicouria; did not know of the arrival of any military goods at Milford which were put on board a steamer; had business relations with General Goicouria for some years; had applications for war materials from the General during the last six months; had applications within the past two months, the applications did not result in the purchase of any goods by General Goicouria.

Q. Did they result in the purchase of such goods by other parties?

A. That question I decline to answer, as it might tend to criminate myself.

After some discussion the question was admitted, and the witness testified that parties came to him on the recommendation of Goicouria, and he sold them arms; some goods in which he had an interest were shipped to him from Governor's Island to Milford; could not tell the exact time they left; thought the goods left Governor's Island indirectly by his orders; gave directions for the vessels to go when they were ready; had an understanding with a party that if he shipped his goods on board of a vessel he should be paid for them; did not know the name of the vessel; the vessel was to be on the Long Island sound.

Mr. Lowrey objected to the witness stating with whom he had the understanding, unless it was connected with the case, as the District Attorney should not be permitted to go on with guesswork in the matter for the purpose of other prosecutions.

The Commissioner permitted the witness to answer.

Examination resumed—Had an understanding with Mr. Lora that if the goods were delivered on a vessel he should be paid; the goods about which the understanding took place were guns, cartridges, &c., the amount being about \$70,000 or \$80,000; have had so much conversation with General Goicouria that he could not remember if he had any conversation with the General on the subject of the understanding he had with Lora; Mr. Gonzales had no knowledge of his conversation with Lora.

Luch Sloan, second steward on the steamer Catharine Whiting, deposed that he was a seaman for nine years; the Catharine Whiting lay at the Atlantic Dock on Saturday, 26th of June; she left that afternoon and anchored off Bedloe's Island; the crew numbered thirty-two; there was one passenger; he believed that he was the defendant; thought he might be the purser; did not know what the Whiting had on board; sized articles to go to Galveston and Key West; the Whiting lay in the stream till she was taken to the Navy Yard; she had steam up one day.

Cross-examined—Was subpoenaed by one of the marshals; the Marshal told him he should make a good thing if he would come; he said he would make \$100 out of it; the money was to be paid by Deputy Marshal Davis, who was employed by Marshal Barton to look after Cuban matters.

Mr. Lowrey here asked Mr. Phelps, the District Attorney, to reproduce the informer French, but the latter said that French, having fears for his personal safety, went about his own private business, as he and Barlow had told him that he would not be required any more.

Mr. Lowrey was sorry for that, as he had obtained some facts about the antecedents of French which would discredit his testimony.

The government here closed their case.

ARGUMENT OF COUNSEL.

Mr. Lowrey then rose and said—May it please the Court, I ask to have the accused discharged from custody, being, as far as the evidence here presented goes, as innocent a man as any one in this court room. I need not suggest to your Honor the necessity of distinguishing between those things which are probable and those which are merely suspected, and here it will be proper to first advert to the offence charged against General Goicouria. The District Attorney agrees to limit the discussion to the sixth section. There is nothing whatever in the evidence to connect him in any way with the third section—that is, fitting out and arming a vessel intended to cruise and to commit maritime hostilities.

Mr. Phelps—I don't agree to that.

Mr. Lowrey—Then I ask the District Attorney to describe the offence under the statute he claims was committed by General Goicouria.

The Commissioner—That is but fair and right.

Mr. Phelps—I have no objection to that. The evidence shows here that the offence was committed against both the sixth section and third section of the statute.

Mr. Lowrey—Then you proceed on two charges—one under the third section and one under the sixth section. Now, with regard to the first charge, it is held that before you can convict on this charge it is necessary to determine that there has been a vessel or ship fitted out and armed with an intent—that intent being to cruise and commit hostilities; and it must be fitted out and armed, and the intent exist in the mind of the accused that such armed vessel was to be used in the manner described in the statute. So that, therefore, if it should be found in reference to the Catharine Whiting—the only vessel named—if it should be found that that vessel was fitted out and armed, and one in its character and equipment qualified to cruise and to commit hostilities on the high seas, it must still be found to have been fitted out, armed and equipped by the accused in this case General Goicouria. With regard to the vessel herself no evidence has been given whatever concerning her character in that respect. She is described merely as a steamer with a crew of thirty-two men—certainly not a fighting crew. There is no evidence that she was provisioned, munitioned or prepared for cruising; nothing at all to convict the vessel as a cruiser, and failing to convict the vessel the prosecution certainly fails to convict General Goicouria. For it is not to be supposed that it will ever happen, as it never yet did happen, that a common passenger found on board a ship will be condemned by the law relating to vessels as cruisers. This section has no relation to such a vessel as this, engaged in peaceful pursuit of commerce and carrying passengers. It is to be presumed that the Catharine Whiting was merely such a vessel; and if she was not the District Attorney would be only too ready to prove that she was a vessel capable of cruising. This part of the case falls to the ground by the weight of its own absurdity. And even if the vessel was equipped and armed that fact does not connect General Goicouria with the purposes of such arming and equipment from the fact that he was found on board. The testimony says that he was represented and had the appearance of a passenger. Some one said he was a purser, and some one says he was introduced by a name not his own. But that is nothing. The District Attorney will have to argue this absurd and untenable proposition—that whenever a vessel shall be seized by the Marshal it shall be deemed to be an armed vessel, and any person found on board shall be presumed to know that such vessel was armed and equipped as a cruiser destined to commit hostilities. So far as the destination of the vessel was concerned it has been proved that the vessel was destined for Galveston by the way of Key West. Your Honor will be bound by the evidence, and from that we find that the vessel was bound on a lawful voyage, without any equipments of any kind whatever—nothing at all about her to bring her within the description of the vessel named in the third section. The more serious offence must be decided as to the sixth section; and here, in this connection, I must call attention to all the circumstances surrounding the case. General Goicouria is accused of an offence made so by prohibition. He is accused of an offence in which he bears a certain relation to General Washington and Benjamin Franklin, once called traitors, and who might have been made to stand in some court to answer such charges as General Goicouria stands charged with here. The real offence is one which reflects no infamy on private character. It is not forbidden for the accused or for any man to desire to aid his country and the friends of his country by any means within his power, provided the thing done is not specifically forbidden by the statute. And long distance may be the day when it shall be forbidden to any man in this country, not only to sympathize with but to aid all the efforts of any people wherever situated to gain good laws, good order and good government for themselves as much as happily we enjoy. I think we may go more fully and in a more efficient way into the considera-

tion of the offence charged against General Goicouria by considering first whether he comes within the prohibition of the statute, by taking up the conditions of this offence. First, then, there must be a military expedition to be conveyed hence against the dominions of any foreign prince or potentate. Now it has not been testified by any one what was the ultimate purpose of the expedition concerning which some evidence has been given, but which has not been proven to have been an expedition, although the term has been constantly used in speaking of it. I only use the term because the thing itself is best known by it. This was not in reality a military expedition, within the meaning of the law, so far as the proof goes. There is no proof whatever of any organized military expedition. No one witness has sworn that any one connected with a supposed expedition intended to commit hostilities against Spain. And your Honor cannot infer that at the present time there is any war existing between Spain and her colonies. Our government has not recognized such a state of things, and your Honor has no means of knowing of such a fact—if the fact existed—than through the political branches of the government. And the government, so far as you are informed, is entirely unaware there prevails any disorder, civil war or disturbance of any kind within the territories of Spain.

The District Attorney has failed to show that it was the purpose avowed or withheld of any person whose name was mentioned with the supposed enterprise to commit hostilities against any person, against any foreign prince or State, except against the potentate who rules over Galdier's Island, where they landed. And if it had been shown to your Honor's satisfaction that there had been organized an enterprise or military expedition such as is forbidden to be carried out set on foot here against the territories of a foreign power the accused has not been implicated therein. To sustain the charge against the accused it must be proved that he had begun this expedition; that he had set it on foot, and that he prepared and provided the means for a military expedition. Now I insist your Honor will search in vain for any proof that he provided or prepared in any way the means for the prosecution of this expedition or any other expedition. And yet, perhaps, it may be proper to limit the inquiry to the expedition concerning which there has been some proof. Now with that expedition, whatever it was, there is not a scintilla of evidence connecting General Goicouria with it. The prosecution point to his purchase of material susceptible of use in war, but concerning which there is no further evidence as to what final use it was proposed to put it to. Mr. Pond distinctly denies that he furnished General Goicouria with any arms, and he denies also that any arms were sold or furnished by him to others at any request of General Goicouria or by his intervention. He denies any knowledge of an expedition, and he did not know where the arms he sold to others were going to. Mr. Cody has shown that the Catharine Whiting was part of an expedition, and the only right to call it a Cuban expedition at all is deduced from the fact that Mr. Chris. when he went on board the Juno found some Cubans on board. French testified that he was enlisted by Colonel Ryan to go to Cuba and fight against Spain, but there is no connection whatever established between the Catharine Whiting, Colonel Ryan and General Goicouria.

The District Attorney will argue that there is probable cause to commit him for providing means through Pond for a Cuban expedition. But every one of the propositions I submit as against such a decision is sustained. First, that there is no proof satisfactory to your Honor of any forbidden expedition. Next, that they are not able to show he purchased arms for any expedition.

It was said he had a hat in his cabin found there after his arrest, and as having that hat seized upon as a link to connect him to the Cuban expedition, because some similar hats were found among the parties arrested. The evidence is that he owned that hat for a long time, and that was just the sort of a hat wanted for a warm climate like Cuba.

Mr. Phelps—Have you been there?

Mr. Lowrey—Yes; and I hope Cuba will ere long receive all American citizens as fellow citizens, and that there we shall have accorded to us the same rights as in any State of the Union; then I hope we shall be permitted to wear our hats in peace. And now I reiterate that it is not unlawful to be connected even with an unlawful enterprise or expedition. It would not be unlawful for me, having heard that an expedition was about to be fitted out of the kind, forbidden by law, and being led by my sympathies to connect myself with that expedition, to go on board and desire to shed my blood in aid of the purpose contemplated by the expedition. Would it not, therefore, be lawful for General Goicouria, whose home is in Cuba, to go on board a vessel in this harbor and seek to get there? It is not an unlawful thing to form the purpose here and then go to Cuba and there shed his blood for the just cause he has espoused. It would not be an unlawful act for him to persuade others to combine with him.

Mr. Lowrey quoted precedents in support of his views on this point, and proceeded. The laws seek only to guard our own government and country from useless and unnecessary complications. The purpose of the act is more to preserve our national unity than to suppress the hopes or sympathies or to control the aims of any persons within our territories, except so far as they might seek to carry into ultimate performance their hopes and aims and objects, in the manner expressly forbidden. I repeat there is no evidence to satisfy justice or to satisfy your Honor that General Goicouria should be held to bail on a charge that he attempted to set on foot an armed expedition, or that he attempted to fit out a vessel, with an intent that that vessel should cruise on the high seas and commit hostilities against the citizens of another State. The only vessel that can be recognized by the Court in this matter is the Catharine Whiting, and she is not a vessel intended by the act—not a vessel capable of cruising and committing hostilities on the high seas. But even so far as regards General Goicouria there has been no evidence to connect him with that vessel. So that the government fails on its preliminary charge against General Goicouria on that branch of the alleged offence. And in conclusion it falls, because there is no evidence here whatever of the fact that there was an expedition of the sort forbidden, or if there was that General Goicouria had any knowledge of it. I submit the case of the accused with perfect confidence in the learning, impartiality and integrity of the Court.

Mr. Phelps, Assistant District Attorney, addressed the Court for the prosecution in an able speech, reviewing the testimony as it reflected most upon the accused, and strongly urged the vindication of the laws.

REMARKS OF THE COMMISSIONER—HE DISMISSES THE COMPLAINT.

Commissioner Betts then delivered his ruling on the case. He said—There is really no question of law involved. The question is one purely of fact, and probably I am as well qualified to decide now, with the impressions of the testimony fresh upon my mind, as I would be by letting the matter lie over for further deliberation and consideration. There are two questions, as stated by counsel, involved in the case. One is whether any expedition was begun or set on foot from here against Spain and in aid of the party in Cuba contending there and fighting against the Spanish government. The other question is whether, if any such expedition was set on foot, General Goicouria came within the provisions of the statute as having taken a part in beginning or setting on foot or providing and furnishing the means for it. These two questions are independent. Although the evidence in the case bears on both, I am satisfied that the government have proven that an expedition was set on foot from here intended as against Cuba. The testimony of French is positive on this—that he was enlisted with three hundred other men, who all submitted to the same orders as to their movements. Independent of that, when the tug was seized there were found on board maps and charts having reference to proposed movements and operations in Cuba and flags appropriate for the liberating army in Cuba. There was also a standard on which was worked the word "Cuba." All these circumstances combined with the positive testimony, shows that this was a military expedition consisting of certainly over one hundred men, organized for the purpose of invading the island of Cuba. Therefore as to this military expedition I hold that the government has made out the case. The important question then is, whether General Goicouria is proved to have begun, set on foot or provided the means of this expedition. The testimony of French points to no single act on the part of General Goicouria which connects him either with beginning or setting on foot or providing or furnishing the means for this expedition. There are many acts which parties living here may rightfully engage in to aid the insurgents in Cuba. It is in accordance with law that any one here should, if they thought fit, provide them with arms and munitions, if they did not go so far as to organize a hostile expedition. If General Goicouria was simply engaged in providing arms and munitions in aid of the cause of Cuba as against Spain, provided he did not allow his efforts to go so far as to organize an expedition, his acts were in that case within the limit of the law. If the government seeks to charge him with going beyond that, it rests with the government to prove it. But it is the duty of the Court to put the most favorable interpretation upon his acts in this respect, and so far there is nothing in French's testimony to implicate him in a criminal act, nor has the government proved that he took any active part in organizing the expedition.

The Commissioner reviewed the testimony of other witnesses, and continued—We now come to the leading feature of the case—the capture of the Catharine Whiting. Now, if the government had shown by testimony that the Catharine Whiting was employed and engaged to carry the expedition to the island of Cuba, and that General Goicouria was then on board under an assumed name and character, that would be a strong circumstance to indicate his activity in providing these important means to make the expedition effective. But the government has failed to establish the fact that the Catharine Whiting was to be engaged in that way beyond suspicion. She hauled into the stream with a crew shipped for Galveston. But independent of the circumstance of Gen. Goicouria being there, there was nothing on board that could be regarded as suspicious. It would certainly be beyond the question to say that his being on board was to make the character of the vessel suspicious, or that he is to be condemned because he was on board the Whiting. Under all the circumstances of the case I hold that the government has not produced sufficient evidence to show that General Goicouria has in this matter gone beyond the limits of that sympathy and co-operation with Cuba which by law he can feel and express. The prisoner is therefore discharged.

At the close of Commissioner's remarks there was commenced a clapping of hands which changed into tremendous cheers, again and again given. Soon the whole courtroom was in general confusion, the General's compatriots pressing forward to embrace him and congratulate him. Several ladies were in court, and they mingled with the enthusiastic throng, shaking hands and smiling upon all. Thus ended the Goicouria examination.