

APPENDIX

Walker's Defense at his Trial

TRIAL OF COL. WILLIAM WALKER.
U. S. District Court. I. S. K. Ogier, Judge.

THE DEFENCE.

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Col. WILLIAM WALKER said:

May it please the Court and gentlemen of the Jury, were I disposed to rest this case barely on legal and technical grounds, I would have trusted it entirely to the hands of the able counsel who have addressed you. It is not merely to escape the penalty of the law -- it is not merely to avoid the punishment which is appointed under the statute, that I appear to defend this case before you, and before the country.

No mere personal considerations would induce me at the present time, after the able and eloquent addresses that have been made before you, to thrust myself further on your time. It is not even the mere consideration that I am here to defend myself and my personal honor, dearer to me I trust than any mere consideration of liberty or of life -- it is not even that consideration that moves me to speak to you.

It is true that some have attempted to tarnish my name in connection with this expedition -- it is true that the ignorant and the malicious have thrown aspersions over me and the cause, but it is not to vindicate myself, or my own honor, that I appear before you whom I regard in a yet higher light than that of mere jurors -- whom I regard as men sitting to some extent as the embodiment of the opinions, not only of the country, but as something higher still -- of the judgment and of the opinions which posterity will pass not only on me but on my comrades.

It is therefore to vindicate the cause -- to vindicate the brave and noble men who stood by me in prosperity as well as in adversity, as well as myself and my own intentions, that I come before you. It is for this, that I ask at your hands a verdict of acquittal.

In sailing from the port of San Francisco, on the *Caroline*, it was no transitory motive that induced me to the step. It was no mere impulse of the moment -- nothing which might be conceived in a thoughtless brain, -- but I

attempted to carry into execution a matter which through days and months and years I had thought on and deliberated upon, and satisfied myself that not only were the objects which I sought practicable -- not only consistent with my own personal honor and the respect which every man owes to himself, but also perfectly consistent with the laws of the land. And it is for the purpose of showing that the objects and intentions which I then cherished -- which I then had in view, came within the limits of the law and the Constitution, that I shall first speak to you on.

The evidence is that the first idea of this expedition was entertained in the year 1852. At that time, Mr. Emory, according to the testimony of Captain Snow, was an agent at Guaymas and sought an interview with the Governor of Sonora, for the purpose of procuring grants of land on the frontier, on the condition of protecting the people from the attacks of the Apaches. He went to Hermosillo, and learned that the French under Raousset had procured a similar contract. At that very time, Mr. Snow happened to be at Guaymas.

This is one of the facts, together with another that a contract had been entered into between Boulbon and the Mexican Government, and other facts that would have been brought before you in a yet more conclusive and legal manner by the testimony of the French consul. I can only prove it now in a secondary way by Snow.

Boulbon got the contract, and Mr. Emory was obliged to return to San Francisco. But in a few months there sprung up a disagreement between Boulbon and the Mexicans, and in consequence of that disagreement, a conflict; but the conflict was not brought about by any unlawful act of Raousset. It was brought about by the misconduct of the Mexican authorities. He and his men were obliged to capitulate and leave the country, and give up the contract.

Had M. Dillon been on the stand, we should have shown conclusively the time when he arrived in San Francisco. We could have shown by his testimony, together with the testimony of Capt. Springer, that no sooner than they left the land that the idea was revived, and the intentions and objects of going to Sonora were again mooted and again resolved upon in Marysville, but although the testimony is secondary and somewhat inconclusive, I think it may be sat-

isfactory to your minds that there was this connection and this similarity of aims and intentions. As soon as Boulbon failed to accomplish his object, there were American adventurers ready and willing to undertake the same contract on the same conditions; and gentlemen let me show you the difference between the conduct of the government in relation to Raousset and towards the expedition afterwards I engaged in, not in fact that I want to cast odium on the government, but merely to show the difference of its conduct towards the French adventurers and towards the American.

At the time Raousset Boulbon left San Francisco in '52, there was no attempt to arrest him -- no attempt to put an end to the expedition -- no attempt to interfere with his objects. He left, and no armed force entered on the deck of his vessel and said he should not leave the port of San Francisco. No commanding officer was present, and Boulbon was allowed to go in peace.

Raousset Boulbon returns to San Francisco, after having, to all intents and purposes, the same intentions as I afterwards had. He returns, after having committed an act of hostility against the Mexican Government, but there was no prosecution against him. There was no attempt on the part of the United States to punish him for the offence for which I am arraigned before you.

In pursuit of these objects three or four of us go down to Guaymas: we go down there with Mexican passports in our hands; we go down there with the sign-manual of the Mexican Consul; we go down there according to the law and comity of nations; we went there for the accomplishment of a peaceful object. There happened to be in authority at the time the Prefect who commenced the difficulty with Raousset, and who being naturally a thorough Mexican in his prejudices -- a man ready to uphold the ignorant and despotic authority of the government against all foreigners, threw every impediment in the way of our entrance into Sonora. It was before him we were brought up and made to acknowledge our purposes, and tell what was our business in Sonora.

That was sent on to the Governor of Sonora, who, instead of approving of his conduct, reproved him, and sent authority for us to go on. There were declarations and affidavits that our intentions were to see the Governor and obtain from

him grants of land on certain conditions; but the delays that were occasioned forced me to the conclusion that we would not be permitted to enter Sonora; and only a day or two before I left the authority from the Governor was sent down permitting me to go to Sonora.

But to show the purposes and objects that I then held were considered to be as I have stated them by the inhabitants of Sonora, I would say that at the time when I was on the very point of departure, when the Indians were ravaging the country -- when it was expected the Apaches, in their own beautiful and savage language, "would ride into the town watered by a river carried on the back of jackasses" -- when these declarations were spread throughout Guaymas, they were in consternation at the approach of the savages, and then the inhabitants, recognizing my peaceful objects, sent an invitation to me to return, and hoped that I would return and bring sufficient Americans to protect the country from the incursions of the savages.

It was shown by the testimony that, in pursuit of these same objects, I returned to San Francisco, and it next appears that the *Arrow* was set up for Guaymas. I imagine that none of the Federal officers will object to the history. You remember, the District Attorney admitted that the libel filed in the case of the *Arrow* was dismissed because there was no legal power to prosecute it. It was not for the sake of arguing from this in favor of my acquittal that I introduced that piece of testimony, but it was to show another proceeding taken here in regard to preventing me from going to Sonora, and in order to show an act of the General commanding here.

Unwarranted by law and without any authority, he placed soldiers on the vessel, and used his military authority to prevent her leaving the port. I want to argue from this, not any innocence of motive on my part, but the despotic authority of the Commanding General. This was the reason that obliged me to be private and secret in the matter; but it appears by the evidence that we left in the *Caroline*.

I shall not attempt to argue the question which has been so ably argued to you, that the evidence here does not warrant a conviction under any section of the statute, but proceeding at once to the testimony, gentlemen, you will see

that the evidence is direct and positive that, till after leaving this port, and till some time afterwards, we had no intention whatsoever of landing at La Paz, and that all our objects and intentions were to go to Sonora.

There is not one tittle of evidence that La Paz was thought of till two or three days before we touched at Cape St. Lucas. And, gentlemen, it is shown that on board the vessel the peaceable landing at La Paz was discussed between us. If we had a fixed and deliberate intention of hostility towards Mexico before leaving, why should we discuss whether we should land at La Paz with a peaceable or hostile intention? If the intention of hostility was fixed, why discuss it on board the vessel?

Then there was apparently no reason to conceal our motives. Then there was no fear of prosecution in the matter. We were beyond the jurisdiction of the United States. We were on the high seas with the Mexican flag above us, and there was no nation that could punish the offence that was committed but Mexico. It is then unreasonable to suppose that we should then deliberate if the intention had been formed here to invade Mexico by force. But it became necessary to change that intention after leaving San Francisco.

If we had been permitted to leave without any interference from the Commanding General, then we would have proceeded peaceably and quietly to Guaymas to carry out the intention that we had all along formed and declared. Had it not been for this, we could have left with a sufficient force on the *Caroline* to carry out our original intentions, but owing to the manner in which it became necessary to conduct the enterprise, we were unable to leave with a sufficient number. We were unable to leave with men enough to go to the frontier, and it was only after we put to sea that that fact was discovered.

It was not known how many men we had till after we were three marine leagues from the shore. Then it was discovered that we had fewer than we anticipated. Then it was discovered that we had only forty-five men, and then it became necessary to think and resolve upon some other plan.

The first suggestion which was made, and I think it not unreasonable to mention it, was the landing in a country

comparatively unpeopled and uninhabited, and such a country was Lower California; therefore the idea at once suggested itself after a little reflection that it was the proper place at which to land, still having in view some great enterprise. Not till after this conclusion was there held a hostile or any other than a peaceful intention of landing at La Paz, by any person in the enterprise.

It was then discussed as to whether we could land at La Paz peacefully and with safety to ourselves, and yet keep within the law of nations. We all know the feelings of hostility to some extent among the authorities of Lower California. We all know the men whose interest it is to maintain the present despotism in Mexico, and to oppose any emigration that would better the country, and afford any change in the country politically. From the complexion of affairs it became necessary to pursue that course which seemed best for our own safety, and yet recognizing the law of nations. It was only after the departure from San Francisco, that the resolution was formed of landing in that manner.

But gentlemen, it is not merely the facts which preceded the sailing of the *Caroline* -- it is not merely the facts which succeeded the sailing of the *Caroline* and preceded the landing at La Paz, but also the acts and occurrences afterwards which show the original intention of the party when they left San Francisco. After remaining a few days at La Paz, and after remaining an additional number of days at Ensenada, we marched for the Colorado, in the very direction and by our acts showing an intention of still proceeding to the frontier of Sonora, the original object of the expedition; and though it became necessary to justify the act by the establishment of some government, and to cover ourselves with some flag, still the attempt was to carry out the original object, and to proceed to the frontier.

It will be unnecessary for me to relate the nature of the march to the Colorado -- it will be unnecessary for me to tell you of the hardships endured by the men on the march -- it will be unnecessary for me to tell you how much they suffered for clothes -- how much they suffered for shoes -- how much they suffered for food and water; and the only reason why I mention these facts is to argue from them the motives which actuated us. Gentlemen, any one who knows human

nature, and the ordinary motives which impel men to endurance and fatigue, must feel that not merely a lust of gain would enable men to go through such hardships and privations as were then endured, nor would merely the thirst for fame be sufficient; but gentlemen, there was something higher than the mere lust of gain, or hope of fame, which sustained the men under such hardships and difficulties.

Above all, we must have had the consciousness that we were right. Without this we could not have endured hardships and privations absolutely worse than the most torturing death; and from this I would argue the original object, and intent of the Expedition. It was not only tinged with humanity, as well as a hope of bettering our own condition in the world; but was even something more noble than that. I don't speak merely for myself, but for the men who were with me; and I say that there must have been something more noble than these sordid objects which enabled them to undergo such fatigue.

So much, gentlemen, for the intention we had in leaving San Francisco. It has been argued to you by Mr. Randolph, that it was the intention which constituted the crime; and if there was any offence, that it was merely of the intention, and not any overt act committed within the territory of the United States, and within the jurisdiction of this Court. In this prosecution the government wishes to reach a man's conscience -- to probe it to its depth, and ascertain what his intentions were. I am willing that it should be probed; I am willing that it should be ascertained by evidence what were my objects and intentions -- because they are such that no man need be ashamed of.

It was for this reason I was willing the Court should go to such quixotic lengths; and even adopt the strict morality of the Saviour of mankind, who said: "A man who looketh after a woman, to lust after her, hath already committed adultery in his heart." I am ready to be tried on those grounds; and it is for you to say if I had merely an intention and desire to commit an act of hostility against Mexico -- that I have already committed the crime in my heart, and that therefore I should be punished for the offence. It is on these facts, and with all the testimony before you, that you are to pass on these allegations.

So much, gentlemen, for the intention of the parties who originated this expedition. The next question is, whether this intention, or any acts of mine showing this intention constitutes an offence against the Law of Nations. It is stated that the statute under which the indictment was found, was passed under the section of the Constitution giving to Congress the powers to define offences against the Law of Nations, and therefore the deduction is, that if no offence has been committed against the Law of Nations, I stand here guiltless before you.

It is an accepted doctrine among all the writers, that the Law of Nations is founded on natural right and natural justice, and it is therefore to be ascertained whether this expedition was contrary to natural right and justice. We are to ask was it against the Law of nations? and if it was not against the Law of nations, then it was not against the principles of natural right and justice.

To show that this expedition, the nature of which has been elicited by the testimony, was not against the Law of Nations, I will cite an authority which should have much weight with us: it is not Grotius or Puffendorff, or Vattel, or men learned in municipal or natural law, who announce this doctrine. It is higher authority -- it is the authority of the men who founded this Government. It is the high authority of the Puritan fathers that I will cite in support of the argument that this expedition was not against the Law of Nations.

[Having read from Kent's Commentaries portions of a paper styled "General Considerations for the Colonization of New England," Mr. Walker said.]

Here, then, it is expressly laid down by an authority which I hold to be supreme -- it is laid by an authority that nobody here will contravene -- that "in a country devastated by savages, any civilized nation has a right to enter and possess it." This is the principle on which I based my action -- this is the authority on which I rely. This is the example which I wished, at a long distance, to imitate. Will an American jury so far stultify itself as to say that the men to whom we owe our political institutions, had not correct ideas of the laws of nature and of nations.

Having argued on this somewhat further Mr. Walker alluded

to the reflections cast upon the people of California on the U.S. Senate in regard to their filibuster sympathies, and called upon the jury to vindicate the country. In conclusion, he said,

"Of one thing I stand conscious in my own mind, that I have acted throughout with honorable and lawful motives. It is true I regard (and who does not?) the good will and opinion of my fellows -- not only those immediately around me, but others; but it is not the sneers of an ignorant and malicious press -- it is not the settled conviction of the popular mind -- it is not even the expression of the popular condemnation that can shake any settled purpose of my mind, when I am satisfied that I am right -- and I will rely on that for consolation, though your verdict should consign me to a prison.

[The Court then adjourned to Thursday morning.]

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