It follows from the authorities cited, that a right to carry on mixed war never extends into the territory of a nation at peace. It can be exercised on the high seas only, or in a territory which is vacant and belonging to nobody. It is in modern law confined mainly to the case of pirates. But even these cannot be arrested in the territory of a foreign nation at peace with the sovereign of the arresting ship. Molloy de Jur. Mar. B. 1, ch. 1, 16.

Admitting, then, that England might protect a man against our jurisdiction by saying that he did a public act under her authority, does it not behove her at least to show that she was acting within the limits of her own jurisdiction, especially where she has prescribed them to herself? Shall her declaration serve to deprive us of power where she is exceeding her own? And this brings one to inquire whether the transaction in question be such as any national right so far examined can sanction. She puts herself as we have seen, on the law of defence and necessity; and nothing is better defined nor more familiar in any system of jurisprudence, than the juncture of circumstances which can alone tolerate the action of that law.

A force which the defender has a right to resist must itself be within striking distance. It must be menacing, and apparently able to inflict physical injury unless prevented by the resistance which he opposes. The rights of self-defence and the defence of others standing in certain relations to the defender, depend on the same ground, at least they are limited by the same principle. It will be sufficient, therefore, to inquire of the right so far as it is strictly personal. All writers concur in the language of Blackstone, (3 Com. 4,) that, to warrant its exertion at all, the defender must be forcibly assaulted. He may then repel force by force, because he cannot say to what length of rapine or cruelty the outrage may be carried, unless it were admissible to oppose one violence with another.—"But," he adds, "care must be taken that the resistence does not exceed the bounds of *mere defence* and *prevention*, for the *defender* would then himself become the *aggressor*." The condition upon which the right is thus placed, and the limit to which its exercise is confined by this eminent writer, is enough of itself, when confined to M'Leod's affidavit, to destroy all colour for saying the case is within that condition. The Caroline was not in the act of making an assault on the Canada shore; she was not in a condition to make one; she had returned from her visit to Navy Island, and was moored in our own waters for the night. Instead of meeting her at the line and repelling force by force, the prisoner and his associates came out under orders to seek her wherever they could find her, and were in fact obliged to sail half the width of the Niagara River, after they had entered our territory, in order to reach the boat They were the assailants; and their attack might have been legally repelled by Durfee even to the destruction of their lives.

The case made by the affidavit is in principle this: a man believes that his neighbour is preparing to do him personal injury. He goes half a mile to his house, breaks the door and kills him in his bed at midnight. On being arraigned, he cites the law of nature; and tells us that he was attacked by his neighbour, and slew him upon the principle of mere defence and prevention; or, in the language of the plea, *for an assault demesne*—"he made an assault upon me, and would then and there have beat me, had I not immediately defended myself against him; wherefore I did then and there defend myself as I lawfully might for the cause aforesaid; and in doing so did necessarily and unavoidably beat him, doing him on such occasion no unnecessary damage. And if any damage happened, it was occasioned by his assault and my necessary defence."

"To excuse homicide in self defence," says another English writer, "the act *must not be premeditated*. He must first retreat as far as he safely can, to avoid the violence threatened by the party whom he is obliged to kill. The retreat must be with an honest intention to escape; and he must flee as far as he conveniently can by reason of some impediment, or as far as the fierceness of his assault will permit him, and then in his defence, he may kill his adversary." 1 Russ. on cr. 541.

Such is the law of mixed war, or neutral ground. The books cited are treating of no narrow technical rule peculiar to common law; but the law of nature and of nations, the same everywhere, of such paramount price as no municipal or international law could ever overcome, and intelligible to every living soul. It is easily applied both as between individuals in civil society and nations at peace. Passing the boundaries of *strict* not *fancied* necessity, the remedy lies in suit by the State or citizen whose rights have been violated, or by demanding the person of the mischievous fugitive who has broken the criminal law of a foreign sovereign.

Accordingly, Puffendorf, after considering the rights of private war in a state of nature, adds:—"But we must by no means allow an equal liberty to the members of civil states. For here, if the adversary be a foreigner, we may resist and repel him any way at the instant when he comes violently upon us. But we cannot without the sovereign's command, either assault him while his mischief is only in machination, or revenge ourselves upon him after he has performed the injury against us." Puf. B. 2, ch. 5 § 7. The sovereign's command must, as we have seen, in order to warrant such conduct in his subject, be a denunciation of war.

England, then, could legally impart no protection to her subjects concerned in the destruction of the Caroline, either as a party to any war, to any act of public jurisdiction exercised by way of defence, or sending her servants into a territory at peace. That her act was one of mere arbitrary usurpation was not denied on the argument, nor has this, that I am aware, been denied by any one except England herself. I should not, therefore, have examined the nature of the transaction to any considerable extent, had it not been necessary to see whether it was of a character belonging to the law of war or peace. I am entirely satisfied it belongs to the latter; that there is nothing in the case except a body of men, without colour of authority, bearing muskets and doing the deed of arson and death; that it is impossible even for diplomatic ingenuity to make it a case of legitimate war, or that it can plausibly claim to come within any law of war, public, private, or mixed. Even the British Minister is too just to call it war; the British Government do not pretend it was war.

The result is that the fitting out of the expedition was an unwarrantable act of jurisdiction exercised by the Provincial Government of Canada over our citizens. The movements of the boat had been watched by the Canadian authorities from the opposite shore. She had been seen to visit Navy Island the day before. Those authorities, being convinced of her delinquency, sentenced her to be burned; an act which all concerned knew would seriously endanger the lives of our citizens. The sentence was, therefore, equivalent to a judgment of death; and a body of soldiers were sent to do the office of executioners.

Looking at the case independently of British power, no one could hesitate in assigning the proper character to such a transaction. The parties concerned having acted entirely beyond their territorial or magisterial power, are treated by the law as individuals proceeding on their own responsibility. If they have burned, it is arson; if a man has been killed, it is murder.

This brings us to the great question in the cause. We have seen that a capital offence was committed within our territory in time of peace; and the remaining inquiry is whether England has placed the offenders above the law and beyond our jurisdiction, by ratifying and approving such a crime. It is due to her, in the first place to deny that it has been so ratified and approved. She has approved *a public act of legitimate defence only*. She cannot change the nature of things. She cannot turn that into lawful war which was murder in time of peace. She may, in that way, justify the offender as between him and his own government. She cannot bind foreign courts of justice by insisting that what in the eye of the whole world was a deliberate and prepared attack must be protected by the law of self-defence.

In the second place, I deny that she can, in time of peace, send her men into our territory, and render them impervious to our laws by embodying them and putting arms in their hands. She may declare war: if she claim the benefit of peace, as both nations have done in this instance, the moment any of her citizens enter our territory, they are as completely obnoxious to punishment by our law, as if they had been born and always resided in this country.

I will not, therefore, dispute the construction which counsel put upon the language or the acts of England. To test the law of the transaction, I will concede that she had by act of parliament conferred all the power which can be contended for in behalf of the Canadian authorities, as far as she could do so. That, reciting the danger from piratical steam boats, she had authorised any colonel of her army or militia, on suspecting that a boat lying in our waters intended illegally to assault the Canada shore, to send a file of soldiers in the day or night time, burn the boat and destroy the lives of the crew. That such a statute should be executed; but that one of the soldiers, failing to make his escape, should be arrested, and plead the act of parliament.

Such an act would operate well, I admit, at Chippewa, and until the men had reached the thread of the Niagara River. It would be an impenetrable shield till they should cross the line of that country where parliament have jurisdiction. Beyond I need not say it must be considered as waste paper. Even a subsequent statute ratifying and approving the original authority could add nothing to the protection proffered by the first. It would be but the junction of two nullities. So says Mr. Locke [on Gov. B. 2, ch. 19, sect. 239,] of a king even in his own dominions:—"In whatsoever he has *no authority*, there he is *no king*, and may be resisted; for wheresoever the *authority ceases*, the *king ceases* too, and becomes like other men who have no authority." I shall not cite books to show that the Queen of England has no authority in this State in a time of peace.

I will suppose a stronger case; that England being at war with France, should, by statute, or by order of the Queen, authorise her soldiery to enter our territory and make war upon such French residents as might be plotting any mischief against her. Would one of her soldiers indicted for the murder of a French citizen plead such a statute or order in bar? If he could not as against a stranger and sojourner in our land, I need not inquire whether the same measure of protection be due to Durfee our fellow citizen.

"The laws of no nation," says Mr. Justice Story, "can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. It would be monstrous to suppose that our revenue officers were authorised to enter into foreign ports and territories for the purpose of seizing vessels which had offended against our laws."—The Apollon, 9 Wheat. Rep. 362, 371. He has examined the question at large in his book on the conflict of laws, ch. 2, §17-22, p. 19 2d ed.—The result is that no nation is bound to respect the laws or executive acts of any foreign government intended to control or protect its citizens while temporarily or permanently out of their own country, until it first declare war. Its citizens are then subject to the laws of war. Till that comes they are absolutely bound by the laws of peace.

While this prevails, a foreign executive declaration saying—"My subject has offended against your criminal laws. I avow his act. Punish me; but impute nothing to him," is a nullity. As well might a nation send a company of soldiers to contract debts here, and forbid them to be sued, saying—"The debt was on my account, discharge my men, and charge it over against me." Indeed it was urged on the argument that the letter of Mr. Fox had taken away the remedy of Wells the boat owner, by an action of trespass against McLeod for burning the boat. This action, having, it seems, been settled, counsel resorted to it as an illustrative case. Another action brought against him, for shooting a horse on the same occasion, it was said, is also defeated by the same principle.

Counsel spoke as if Schlosser had undergone a sack, and its booty had become matter of belligerent right in the soldiery. Surely, the imaginations of counsel must have been heated. It seems necessary to remind them again and again, even in affirmance of their own admission, that we are sitting to administer the laws of a country which was at peace with England when she sent in her soldiery. If they mean that the approval and demand in Mr. Fox's letter should, under the law of peace have the sweeping effect which is claimed for it, they are bound to show that the royal mandate improves by importation. The Queen has no power at home to take away or suspend, for a moment, the jurisdiction of her own Courts. Nor would a command to discharge any man without trial who should be suspected of having murdered her meanest subject, be deemed a venial error.

It is justly a source of the Briton's pride that the law by which his life and property are protected cannot be suspended even by his monarch; that the sword of justice is holden by her own independent ministers, as a defence for those who do well; but constantly threatening and ready to descend upon the violator of property or personal safety, as the instrument of a municipal law which knows not of any distinction between the throne and the cottage; a law constantly struggling, in theory at least, to attain a perfection that shall bring all on earth to do it reverence; the greatest as fearing its power, and the least as not unworthy of its power. That case is our own.

Much was said on the argument about the extreme hardship of treating soldiers as criminals who, it was insisted, are obliged to obey their sovereign. The rule is the same with respect to the soldier as it is in regard to any other agent who is bound to obey the process or command of his superior. A sheriff is obliged to execute a man who is regularly sentenced to capital execution in this state. But should he execute a man in Canada under such sentence, he would be a murderer. A soldier in time of war between us and England might be compelled by an order from our government to enter Canada and fight against and kill her soldiers.

But should Congress pass a statute compelling him to do so on any imaginable exigency, or under any penalty in time of peace, if he should obey and kill a man, he would be guilty of murder. The mistake is in supposing that a sovereign can compel a man to go into a neighbouring country, whether in peace or war, and do a deed of infamy.—This is exemplified in the case of spies. A sovereign may solicit and bribe, but he cannot command. A thousand commands would not save the neck of a spy should he be caught in the camp of the enemy.—Vattel, B. 7, ch. 10, §179. It is a mistake to suppose that a soldier is bound to do any act contrary to the law of nations at the bidding of his prince. Vattel, B. 1, ch. 4, §53-4, id B. 3, ch. 2, §15. Grot. B. 2, ch. 26, §3, n. 2 and 3. Puff. B. 8, ch. 1, §6 and 7.

But if he were, he must endure the evil of living under a sovereign, who will issue such commands. It does not follow that neighbouring countries must submit to be infested with incendiaries and assassins because men are obnoxious to punishment in their own country, for being desirous to go through life with bloodless hands and a quiet conscience. The Parisians thought themselves bound to obey Charles IX. when he ordered them to massacre the Huguenots. Suppose they had obeyed a similar order to massacre the Huguenots in England, would such an order have been deemed a valid plea on one of them being arraigned in the Queen's Bench? It might have been pleaded to an accusation of murder in France—it would have been good as between the criminal and his own sovereign; but hardly, I suspect, have been deemed so by Queen Elizabeth's Judges. The simple reason would have been that Charles IX. had no jurisdiction in England.

He might have threatened the government and declared war, if such a meritorious servant, a defender of the church should not be liberated by the Judges. But there is no legal principle on which the decrees of foreign courts or the legislation of foreign Parliaments could have ousted the Judges of jurisdiction. Charles might have ordered his minister to call the massacre a *public act*, planned and executed by himself, he having *authority* to *defend* and *protect* his established church; and demanded a release of the man. All this would have added no force to the plea. Neither Elizabeth herself, nor any of the Tudors, arbitrary as the government of England was, would have had power directly to take away the jurisdiction of the judges. Coke, with a law book in his hand, could have baffled the sceptre within its own territorial jurisdiction.

It should in justice be remarked, that one, the governor of Bayonne, and many of his companions in arms refused to co-operate in the massacre at home, and were never punished for disobedience. He replied to the king, that he had sounded his garrison and found many brave soldiers amongst them, but not a single executioner. Suppose a prince should command a soldier to commit adultery, incest or perjury; the prince goes beyond his constitutional power, and has no more right to expect obedience than a corporal who should summarily issue his warrant for the execution of a soldier. Vid. Burl. L. of nature, Vol. 1, pt. 2, ch. 11, section 8.

Every political and civil power has its legal limits. The autocrat may indeed take the lives of his own subjects, for disobeying the most arbitrary commands; but even his behests cannot impart protection to the merest slave as against a foreign government. Public war itself has its jurisdictional limits. Even that, in its pursuit after a flying enemy, is, we have seen, arrested by the line of a country at peace. Beside the limit which territory thus imposes, there are also, even in general war, other jurisdictional restraints as there are in courts of justice.

An order emanating from one of the hostile sovereigns will not justify to the other every kind of perfidy. The case of spies has been already mentioned. An emissary sent into a camp to corrupt the adverse general, or bribe the soldiery, would stand justified to his immediate sovereign. Vattel, B. 3, ch. 10, §181; though even he could not legally punish a refusal. In respect to the enemy, the orders would be an obvious excess of jurisdiction.

The emissaries sent by Sir Henry Clinton, in 1781, to seduce the soldiers of the Pennsylvania line, falling into the hands of the Americans, were condemned and immediately executed. 4 Marsh. Life of Wash. 366, 1st ed. Entering the adverse camp to receive the treacherous proposition of the general is an offence much more venial. It is even called lawful in every sense as between the sovereign and employee. Vattel, B. 3, ch. 10, §191.—Yet in the case of Major Andre, an order to do so was, as between the two hostile countries, held to be an excess of jurisdiction.

These cases are much stronger than any which can be supposed between nations at peace. In time of war such perfidy is expected. In time of peace every citizen, while within his own territory, has a double right to suppose himself secure; the legal inviolability of that territory and the solemn pledge of the foreign sovereignty.

The distinction that an act valid as to one may be void as to another is entirely familiar. A man who orders another to commit a trespass, or approves of a trespass already committed for his benefit, may be found to protect his servant, while it would take nothing from the liability of the servant to the party injured. As to him, it could merely have the effect of adding another defendant, who might be made jointly or severally liable with the wrong doer. A case in point is mentioned by Vattel, B. 3, ch. 2, § 15. If one sovereign order his recruiting officer to make enlistments in the dominion of another in time of peace between them, the officer shall be hanged, notwithstanding the order, and war may also be declared against the offending sovereign. Vid. a like instance id. B. 1, ch. 6, § 75.

What is the utmost legal effect of a foreign sovereign, approving of the crime his subject committed in a neighbouring territory? The approval, as we have already in part seen, can take nothing from the criminality of the principal offender.—Whatever obligation his nation may be under to save him harmless, this can be absolutely done only on the condition that he confine himself within her territory.—Vattel, B. 2, ch. 6, § 74. Then, by refusing to make satisfaction, to furnish, or to deliver him up, on demand from the injured country, or by approving the offence, the nation, says Vattel, becomes an accomplice.—id. § 76.

Blackstone says, an accomplice or abettor—[4th Com. 68]—and Rutherforth, still more nearly the language of the English law, an accessory after the fact—B. 2, ch. 9, § 12. No book supposes that such an act merges the original offence, or renders it imputable to the nation alone. The only exception lies in the case of a crime committed by an ambassador—not because he is guiltless, but by reason of the necessity that he should be privileged, and the extra-territorial character which the law of nations has, therefore, attached to his person. Hence, say the books, he can be proceeded against no otherwise than by a complaint to his own nation, which will make itself a party in his crime, if it refuses either to punish him by its authority or deliver him up to be punished by the offended nation. Ruth. B. 2. ch. 9, § 20. Independently of this exception, therefore, Rutherforth insists, with entire accuracy, that "as far as we concur in what another man does, so far the act is our own; and the effects of it are chargeable upon us, *as well as upon him*."—Ruth. B. 1, ch. 17, § 6.

A nation is but a moral entity; and in the nature of things can no more wipe out the offence of another by adopting it, than could a natural person. And the learned writer just cited accordingly treats both cases as standing on the same principle. B. 2, ch. 9, § 12. "Nothing is more usual," says Puffendorf, "than that every particular *accomplice* in a crime be made to suffer all that the law inflicts." B. 3, ch. 1, § 5. Vattel says of such a case, B. 2, ch. 6, § 75, If the offended state have the offender in her power, she may, without scruple, punish him.

Again, if he have escaped and returned to his own country, she may apply for justice to his sovereign, who ought, under some circumstances, to deliver him up—id. § 76. Again, he says, "she may take satisfaction for the offence herself when she meets with the delinquent in her own territories." B. 4, ch. 4, § 52. I before cited two instances in which positive orders by his sovereign to commit a crime are distinctly held to render both the nation and its subject obnoxious to punishment.—Vattel, B. 3, ch. 2, § 15; id. B. 1. ch. 6, § 75; vid. also 1 Burl. pt. 3, ch. 11, § 10.

Was it ever suggested by any one before the case of McLeod arose, that the approval by a monarch should oust civil jurisdiction or even so much as mitigate the criminal offence?—Nay, that the coalition of great power with great crime does not render it more dangerous, and therefore more worthy of punishment under every law by which the perpetrators can be reached!

Could approbation and avowal have saved the unhappy Mary Queen of Scots, where would have been the civil jurisdiction of Elizabeth's commissioners? The very charge of an attempt by Mary to dethrone and assassinate the British Queen, implied the approbation and active concurrence of one crowned head at least. Could the criminal have been saved by any such considerations, the enterprize might truly have been avowed as one which had been planned by the leading governments of Catholic Europe.

The Pope, then, having at least some pretensions to jurisdiction even in England, had openly approved it under his seal. The Spanish Ambassador at Paris was a party relied upon to follow up the event with an invasion. Would James, the son of the accused, have hesitated to join in the avowal, could he have thus been instrumental in saving the life of his mother? Yet the principle was not thought of in the whole course of that extraordinary affair.

Mary openly avowed her general treason as a measure of defence and protection to herself, tho' she denied all participation in the plot to assassinate Elizabeth. Yet the only ground taken was, the technical one (not the less valid because technical) that the accused was personally privileged as a monarch, and could not be tried under the English law, which required a jury composed of her peers. It was added that she came into the kingdom under the law of nations, and had enjoyed no protection from the English law, having been continually kept as a prisoner. Vid. the case stated and examined in the right of international law, 2 Ward's L. of Nations, 564.

No one pretended that her approbation, or that of a thousand monarchs could have reflected any degree of exemption from judicial cognizance upon the alien servants in her employment. Such a principle would have filled England with an army, in time of peace, disguised as Jesuits; for the bigotry of monarchs would at that day have led them to avow any system of pernicious espionage which could have served the purpose of the Pope by executing his Bull of excommunication against Elizabeth.

Canada again being disturbed, and our citizens aiding the revolt by boats, provisions, or money, the purposes of England would certainly require such conduct to be put down at all events. Adopt the principle that she may by avowal, protect her soldiers who steal upon our citizens at midnight, from all punishment at the common law; and before you get even a remonstrance from Washington, your whole frontier might be made a *tabula raza*. No,—before England can lawfully send a single soldier for hostile purposes, she must assume the responsibility of public war.

Her own interests demanding the application of the rule, she perfectly understands its force. What regard have her courts ever paid to the voice of public authority on this side the line, when it sought to cover even territory to which the United States denies her title? The mere act of taking a census in the disputed territory under the authority of Maine, was severely punished by the English municipal magistrates. Had a posse of constables or a company of militia bearing muskets been sent to aid the censor, in what book or in what usage could she have found that this would divest her courts of jurisdiction, and put the cabinet of St. James to a remedy by remonstrance or war? Had the posse been arrested by her sheriff, and in mere defence had killed him, and this nation had, after some two or three years, avowed the act, would she have thought of conceding that in the mean time, all power of her courts over the homicides had been suspended, or finally withdrawn?

But it is said of the case at bar, here is more than a mere approval by the adverse government; that an explanation has been demanded by the Secretary of State, and the British ambassador has insisted on McLeod's release, and counsel claim for the joint diplomacy of the United States and England some such effect upon the power of this court as a certiorari from us would have upon the county court of general sessions. It was spoken of as incompatible with a judicial proceeding against McLeod in this state; as a suit actually pending between the two nations, wherein the action of the general government comes in collision with and supersedes our own.

To such an objection the answer is quite obvious. Diplomacy is not a judicial, but executive function; and the objection would come with the same force whether it were urged against proceeding in a court of this state or of the United States. Whether an actual exertion of the treaty-making power, by the President and Senate, or any power delegated to Congress by the Federal constitution, could work the consequences contended for, we are not called upon to inquire; whether the executive of the nation—supposing the case to belong to the national court—or the executive of this state, might not pardon the prisoner, or direct a nolle prosequi to be entered, are considerations with which we have nothing to do.

The executive power is a constitutional department in this, as in every well organized government, entirely distinct from the judicial. And that would be so, were the national government blotted out, and the state of New York left to take its place as an independent nation.

Not only are our constitutions entirely explicit in leaving the trial of crimes exclusively in the hands of the judiciary; but neither in the nature of things, nor in sound policy, can it be confided to the executive power. That can never act upon the individual offender; but only by requisition on the foreign government; and in the instance before us, it has no power even to inquire whether it be true that McLeod has personally violated the criminal laws of this state. It has charge of the question in its national aspect only. It must rely on accidental information, and may place the whole question on diplomatic considerations. These may be entirely wide either of the fact or the law, as it stands between this state and the accused. The whole may turn on questions of national honour, national strength, the comparative value of national intercourse, or even a point of etiquette.

Upon the principle contended for, every accusation which has been drawn in question by the executive power of two nations, can be adjusted by negociation or war only. The individual accused must go free, no matter to what extent his case may have been misapprehended by either power. No matter how criminal he may have been, if his country, though acting on false representations of the case, may have been led to approve of the transaction and negotiate concerning it, the demands of criminal justice are at an end.

Under circumstances the executive power might, in the exercise of its discretion, be bound to disregard a venial offence as no breach of treaty, which the judiciary would be obliged to punish as a breach of international law.—Suppose some of our citizens to attack the British power in Canada, and the Queen's soldiers to follow the heat of repelling them by crossing the line and arresting the offenders, doing no damage to any one not actually engaged in the conflict. The line being absolutely impassable in law for hostile purposes, the arrest on this side would be a technical false imprisonment, for which we should be bound to convict the soldiers, if arrested here; while the executive power might overlook the intrusion as an accidental and innocent violation of national territory.—Vattel, B. 4, ch. 4, § 43.

I forbear now to notice particularly some of the legal passages and cases which were referred to by the prisoner's counsel in the course of his argument; not for the reason that I have omitted to examine them, but because I consider them inapplicable under the views I have felt it my duty to take of the prisoner's case. They were principally of three classes:—First, passages from books on the law of nations as to what is public war, and the protection due to soldiers while engaged in the prosecution of such a war by their sovereign against a public enemy; secondly, the general obligations of obedience as between him and his sovereign, whether in peace or war; and thirdly, cases from our own books relative to the conflicting powers of the general and state governments. The case of Elphinstone *vs.* Bedreechund, 1 Knapp's Rep. 316, related to the breach of an actual military capitulation entered into during an acknowledged public war between England and one of the petty sovereignties of India.

In considering the question of jurisdiction, I have also forborne to notice that branch of the affidavit which sets up an alibi. McLeod's counsel very properly omitted to insist on it as at all strengthening the claim of privilege. Indeed, he said, the clause was put in merely by way of protestando. If it was inserted with the intention of having it taken as true upon this motion, that alone would destroy all pretence for any objection to our jurisdiction. His surrender was demanded upon the hypothesis that he was acting under public authority. If, in truth, he was not, or was not acting at all, he enjoys, according to his own concession, no greater privilege than any other man. The essential circumstance relied on as going to the question of jurisdiction, turns out to be fictitious; and the argument must be that we have no power to try the question of alibi. On that and every other lawful ground of defence he will be heard by counsel on his trial.

It is proper to add, that if the matters urged in argument could have any legal effect in favour of the prisoner, I should feel entirely clear that they would be of a nature available before the jury only. And that according to the settled rules of proceeding on habeas corpus, we should have no power ever to consider them as a ground for discharging the prisoner. I took occasion to show in the outset that in no view can the evidence for the prosecution of the defence be here examined independently of the question of jurisdiction, and I entertain no doubt that whenever an indictment for a murder committed within our territory is found, and the accused is arrested, these circumstances give complete jurisdiction.

I know it is said by the English books, that even in a case of mixed war, viz.: a hostile invasion of England by private persons, the common law courts have not jurisdiction. It was so held in Perkin Warbeck's case. He was punished with death by sentence of the constable and marshal, who it is said in Calvin's case, 7 Co. Rep. 11—12, had exclusive jurisdiction. Dy.141, a. S.P. 1Curw. Hawk. ch. 2, § 5, p. 9. But that rests on a distribution of judicial power entirely unknown to this state or this nation. The court of the constable and marshal seems to have had an ancient right not very well defined by the common law, of trying all military offences, as appears by the Stat. R. 2, ch. 2, (vid. 2 Pick. St. at Large, p. 310,) which was passed to settle conflicting claims of jurisdiction between that and the ordinary courts, vid. also 3 Inst. 48. The whole is obviously inapplicable to this country, and is pretty much obselete in England. It never can have been held in England or any country, that where a common law court is proceeding on indictment for a common law offence against one arrested and brought before it, a mere suggestion by affidavit, that the offence imputed pertains to deeds of arms, either in a public or mixed war, shall take away power to try, whether the prisoner be guilty or not of the charge contained in the indictment.

All homicide is presumed to be malicious, and, therefore, murder until the contrary appear upon evidence. "The matter of fact," says Foster, "viz. whether the facts alleged, by way of justification, excuse, or alleviation, are true, is the proper and only province of the jury." Lawful defence by an individual (still recognized, it seems, by the law of nature under the name of private war, Grot. B. 1, ch. 3, § 2,) is one instance. Foster, 273. That he acted in right of a nation, or under public authority, is no more than matter of justification. It is like the case mentioned in Foster, 265; the public execution of malefactors; and the jury must judge whether the authority may not have been exceeded. But more, when either public or mixed war is alleged in mitigation, either allegation may be fictitious; and it shall be put to the jury, on the proper evidence, whether it existed or not. The reason is plain, says Lord Hale; for the war may be begun by the foreign prince only where it is public; and he supposes it still plainer where the war is between the king and an invading alien being the subject of a nation with whom the king is at peace. 1 Hal. p. 6, 163. The same writer puts the case of plunder or robbery by an enemy, *tempus belli*, which would not in general be burglary. Yet he admits it might be otherwise if the act were not done in the regular prosecution of the war—id. 565.

Suppose a prisoner of war to escape, and that on his way home, and before he crosses the line, he should set fire to a farm-house in the night and kill the inmates;—is there a doubt that he might properly be convicted either of arson or murder?—When a grand jury have charged that a man has committed murder in this state, I can imagine no case, whether the charge relate to the time of open public war or peace, in which he can claim exemption from trial. If he show that he was in truth acting as a soldier in time of public war, the jury will acquit him. The judge will direct them to obey the law of nations, which is, undoubtedly, a part of the common law. So if the accused were acting in defence against an individual invader of his country. But, above all things, it is important in the latter case for the jury to inquire whether his allegation of defence be not false or colourable. They cannot allow, as an act of defence, the wilful pursuing even such an enemy, though dictated by sovereign authority, into a country at peace with the sovereign of the accused, and seeking out that enemy and taking his life. Such indeed can be nothing but an act of vengeance. It can be nothing but a violation of territory, a violation of the municipal law, the faith of treaties, and the law of nations. The government of the accused may approve, diplomacy may gloze, but a jury can only inquire whether he was a party to the deed, or to any act of illegal violence which he knew would probably endanger human life. If satisfied that he was not, as I sincerely hope they may be, upon the evidence in the case before us, they will then have the pleasant duty to perform of pronouncing him not guilty. But whatever may be their conclusion, we feel the utmost confidence that the prisoner, though a foreigner, will have no just cause to complain that he has suffered wrong at the hands of an American jury.

At our hands the prisoner had a right to require an answer upon the facts presented by his papers, whether in law he can properly be holden to a trial. We have had no choice but to examine and pronounce upon the legal character of those facts, in order to satisfy ourselves of the bearing they might have on the novel and important question submitted. That examination has led to the conclusion that we have no power to discharge the prisoner. He must, therefore, be remanded, to take his trial in the ordinary forms of law.

(From the N. Y. Journal of Commerce, July 14.)

Decision in the case of McLeod.—*The Prisoner not discharged.*—We publish to-day, from the N. Y. American, the decision of the Supreme Court of this state, sitting at Utica, in the case of Alexander McLeod, indicted for the murder of Amos Durfee, at Schlosser, in this state, in connection with the burning of the Caroline. The prisoner had applied for a discharge,—first, on the ground that he did not participate in the alleged offence, and was not present at its commission; and secondly, that if present and acting, it was in the necessary defence and protection of his country against a treasonable insurrection, of which Durfee was acting in aid at the time.

The court, through Judge Cowen, decided against the application. For the grounds of this decision, the reader is referred to the document itself. The effect of this decision will be, to cause the prisoner to be tried on the indictment, by a jury, unless the case, in its present form, should be appealed to the Court of Errors, [the State Senate,] as we have understood it would be, in the event of a decision like the present by the Supreme Court of N. York; and, should the Court of Errors affirm the present decision, that then the case would be carried up to the Supreme Court of the United States.

The court did not consider it their province, under the present application, to examine the question of the prisoner's guilt or innocence, beyond the depositions or proofs upon which he was committed.

We had hoped that this irritating question would be finally disposed of at the present time. In fact, we expected as much. But we are no lawyers, and cannot say but the court have decided correctly. There are still two courts to review the decision, should the prisoner so elect, and if either of them reverse it, the case will not go to a jury. If, however, it should finally go to a jury, there is good reason to expect an acquittal; as it seems now to be universally understood that McLeod did not accompany the expedition which destroyed the Caroline.

The Albany Daily Advertiser of yesterday says, "We learn from Mr. Hillyer, one of the New York deputy sheriffs, who arrived in Utica this morning, that McLeod remains for the present in the custody of the sheriff of Oneida County. What further course of proceedings will be taken is not yet determined. McLeod, we learn, is anxious to go to a jury forthwith; should he determine upon this course, the application for a writ of error on the judgment of the Supreme Court, as intended by his counsel, will, of course, be abandoned."

(From the same, July 17.)

A distinguished member of the New York Bar informs us that the decision of the Supreme Court, in the case of McLeod, is not sustained by the general voice of the profession in this city. And why should it be? For it is in direct opposition to that provision of the constitution, which places our foreign relations, and all things pertaining thereto, in charge of the general government. If the doctrine of the Supreme Court is correct, the nation has no controul over its own destinies, but may at any time be involved in war by any one of the twenty-six States. The Court of Errors, we trust, will set the matter right.

From the Boston Daily Advertiser, July 15.

We regret the decision in M'Leod's case. It appears to us to be an assertion of a claim of State Rights in a manner to interfere with and defeat one of the most important objects of the National Constitution. The case when stripped of its formalities, presents two questions.—1st, whether, admitting it to be a case for the adjudication of the New York Court, and that no claim of jurisdiction had been interposed by the authorities of the United States, the prisoner was not entitled, on the facts stated and fully authenticated, on the authority of the British Minister and the American Secretary, upon the principles of the common law recognised in the State of New York, and of the Law of Nations, to his discharge without trial by a jury?

2d. Whether a case of crime charged upon an individual, which if committed by him, was committed under the orders of his superior military officer, and expressly sanctioned by the British government itself—the question whether that act were justifiable or not, being under negociation between the two governments, and a claim having been made for the discharge of the individual, upon the express ground that the act was avowed by the government to have been committed by its order—whether such a case comes properly under the jurisdiction of the Courts of the State where the act was committed, or is a case for the exclusive consideration of the Courts and authorities of the United States?

These are the two questions in substance which were presented for the consideration of the New York Court. The first is ingeniously argued by the Court in their decision; but we think for popular effect and not soundly. There is much argument to prove what nobody disputes, but no distinct consideration of the real point at issue. The second question which, if it had been candidly considered by the Court, we think might have saved them the labour of their argument upon the first, is hardly touched. It is a question which in our opinion does not admit of a doubt. Fortunately it will be in the power of the Supreme Tribunal of the United States ultimately to arrive at this question, but the object will be attained only after great delay and great public excitement.—On these accounts the unfortunate decision of the Court is greatly to be regretted.

A letter from Washington to the Editor of the New-York Herald says:—"The opinion of the Supreme Court was received, unofficially, in advance of the regular mail at Washington on Tuesday, and we learn that Mr. Fox, the British Minister, has given assurances to our government, that no further steps will be taken by him until the case goes through the Courts of New-York in the regular way."

Home Squadron.—The National Intelligencer publishes the report made to the House of Representatives by Mr. Thomas B. King, of the Committee on Naval Affairs, on the subject of a Home Squadron, for the purposes stated in the late report of the Secretary of the Navy, and also on the importance of providing steam ships of war for the service of this country in case of need. The Committee reported a bill appropriating the sum recommended by the Secretary of the Navy for the Home Squadron, and they recommend the adoption by the House of a resolution instructing the Secretary of the Navy to inquire into the expediency of aiding individuals or companies in the establishment of lines of 'armed steamers' between some of the principal northern and southern ports, and foreign ports; and also to advertise for proposals for the establishment of such lines as he may deem most important and practicable, and to report to the House at the next session. The routes named by the Committee, as those on which they suggest that contracts might be made for the employment of steamers, are that from Boston to Havre, requiring four steamers—from New York to Liverpool, four steamers—Norfolk by way of Charleston and Savannah to Havana, three steamers—and New Orleans to Havana, three. This subject deserves the serious consideration of the Government, and we trust that the inquiry proposed to be instituted will be the means of bringing before Congress at the next session, all the information which may be necessary to justify some effective action upon the subject.—*Boston Daily Advertiser.*

Seale, the robber of the office of Gilbert & Sons, and the store of Davis, Palmer & Co. has been sentenced by the Municipal Court of Boston to ten days' solitary confinement and fifteen years' hard labour in the State's prison. We wish all the rascals in the country had equal justice done them.—*New-York Journal of Commerce.*

A German newspaper says that when Fanny Elssler made her entrance into Richmond, her carriage was drawn by six members of the American Congress. Such disgrace we get abroad, in consequence of the ambition of some of our citizens to make themselves the horses of Fanny. Heads which pay such homage to heels should have been placed at the other ends of their owners.—*Ib.*

The National Intelligencer estimates that the amount of debt and liabilities of the United States government on the first of January next, will be $18,694,449. This does not include the $15,000,000 which it is proposed to borrow for the construction of a Fiscal Bank. The amount of debt and outstanding appropriations on the 1st of January last was $17,273,081.

There arrived at Buffalo during the first week in July, 28,484 brls. flour, and 24,812 bushels wheat.

COMMUNICATIONS.

Mr. Chubb,—

Sir.—Will you please put the following questions to the Committee of general Accounts for the County of Saint John.

Were not my returns in the hands of the Chairman, with the requisite vouchers, some two or three days before the general accounts were laid before the Grand Jury?

If there was neither time nor space for the insertion of my accounts, why were the public not informed that they were handed in at too late an hour?

In expunging many of their remarks previous to publishing, why were those in my case retained without either note or comment?

SAMUEL CLARK,

July 16. *Collector of Taxes for Carleton.*

Mr. Chubb,—

Sir.—It becomes my duty once again to appear in print, in order to disabuse the public mind of any false impressions which those unfortunate but pitiable men, yclept *the Compilers of the Pamphlet*, would wish to make. And in order to do so effectually, you will, I trust, permit me to make a few brief remarks upon their late "Resolutions," published in the Courier of last Saturday. To their first and second "Resolves," I, as a member of the Catholic community in this City, in conjunction with the whole body of the Rev. Mr. Dunphy's congregation—the Puritans excepted—most strongly protest. I protest, first, against their keeping land which might, of right, belong to the whole body of the Church. I protest, secondly, against land being deeded in trust (!!!) to any nine of that Puritanical, or any other body of people, for any such purpose as that contemplated. It may be asked, Why? In the first place, I answer, for this reason: The very ground upon which St. Malachy's Church in this City now stands was held in the like manner—*in trust!*—by one who is now gathered to his fathers—peace be with his ashes—and that *one man* would not resign *that trust* unless a Pew was given him gratis, which had to be complied with! What then, I ask, must be in the contemplations of those double-eyed Puritans? The response is simply this—that when, or if ever, the Church is erected, subject to their "Resolves," these nine *trust-worthies* will require their nine Pews in the same manner, and will prove their right thereto by appealing to the above-mentioned authority. This savours much of the Oliver Cromwell leases and the days of the first Puritans, and must be watched. These nine are better able to pay than we are to lose the rent of nine pews. If this was not their design, I would then ask, why did they not comply with that request which no honest men could or should refuse?—that the land be deeded to his Lordship the Bishop and his successors, in trust, for the use and benefit of this community.—Would they not thus have avoided the censure of the congregation, and the scorn of the public? But no,—their vindictive and ungovernable ambition to become the leaders of the people, has cast a film over their optics, and by their misrepresentations they have drawn the hood over the heads of a few others. The blind leaders of the blindfolded: They already have the land; now build the Church, and they will take the Pews also.

Res. 3, 4, and 5, are childish and innocent. *Res.* 6 is equally so. Mr. Dooly is above them and beyond them in this community. He considers them unworthy of notice, and contemns them.

Res. 7 is disowned altogether by the putative author, Mr. White. The whole of that resolve, in which the poison of the very heart's core of the whole faction is spread out against me, he utterly *denies in toto!* He never saw it—he never heard of it, until it appeared in print. He expresses the utmost regret that his name should be used for such base purposes, and both publicly and privately denounces them as LIARS! When they found that their own statements were of non-effect in repelling public censure; with the last flash of a dying faction, they concocted that meeting—called it—had heaps of resolutions prepared—placed them in the hands of men unacquainted with their motives—Mr. So-and-so you will move this resolution—Mr. So-and-so you will move this resolution, and so on; and being "Judges in their own little Court," passed them.

Res. 8 is very plain and simple—the sale of "the Pamphlet" is rather tedious and uncertain, (notwithstanding all the hawkers and pedlars in the country being so much interested in the proceeds,) that they must now gather subscriptions from the charitable to pay the interest of the purchase money. Funds exhausted—credit gone—Oh! how pitiable!

Res. 9, on the behalf of Mr. T. Collins, is all mock gravity. There is a noise abroad, however, that there was a pecuniary motive for the passing of that resolution. Of that I know nought, and care less. Had they rested here, the whole of the proceedings would be rather laughable than otherwise. But they would be *gods or nothing*. As if it were not enough that they should, as I said before, quarrel with Bishop, Priest, and congregation; they must make cats'-paws of the very few friends they had, to draw their apple of discord from the fiery ordeal of public judgment. Therefore,

Res. 10 is the last and best of the whole. The publicity of those resolutions in forms so different from that in which they passed the meeting, has so completely developed the insidious designs of the Puritanic faction, that those who would even wish they *could* justify their actions, became disgusted with their last proceedings, and in utter detestation have abandoned them forever—allowing them to float down the stream of public shame, "unpitied and unwept," with a

"Farewell, a long farewell to all their greatness,"

As for my part, I have now done with them, and I trust forever. Some of them were men whom I formerly esteemed; it was my fortune, however, whether good or bad time alone can tell, to oppose them in some of their proceedings: for which they have calumniated and abused me. It was my duty to justify myself if I could, and I hope and trust I have done so to the satisfaction of the world. And if in doing so, their castigation has been more severe than they expected, let them put their hands upon their breasts, and, if there is one spark of truth or principle yet remaining within them, condemn me if they can.

July 23, 1841. EDWARD ROCHE.

The Courier.

SATURDAY, July 24, 1841.

The decision of the Judges of the Supreme Court of the State of New-York, in the case of Mr. McLeod, occupies a large portion of our paper to-day. The decision was delivered at Utica, by Judge Cowan, on the 12th July, and was adverse to the application of the prisoner for a discharge from confinement, but whether it was the unanimous opinion of the Bench or not, is not stated. At all events, it appears to have been quite unexpected, and is generally censured by the American papers, as being unsound in law, and not borne out by the authorities referred to in support of the opinions of the court. Indeed one of the editors, whose remarks we have seen, goes so far as to say that Judge C. was pandering for popularity. The case, it is expected, will be brought before the Court of Errors, (the Senate of New-York) which meets in August, and if the decision of the Court below is confirmed, will be carried into the Supreme Court of the United States at Washington; if the decision be reversed by the Court of Errors, or the Supreme Court, Mr. McLeod will be forthwith discharged.

In a few days we shall probably have authentic information as to what course the British Minister at Washington intends taking in the matter at present. The decision, we have no doubt, will cause considerable excitement in England; but we have hopes that justice, though tardy, will yet prevail in the Courts of the Republic, and that Mr. McLeod will soon be restored to liberty.

The Weather, for the past week, has been almost one unvaried round of sunshine, excessively warm and dry. Haying has commenced in some places; the crop on the low lands has been greatly injured, and, in some places, entirely destroyed, by the heavy rains and unusual continuance of the freshets this season. On the high lands, however, the Grass is pretty good. The Grain and Potatoe crops, throughout the Province, generally promise well.

Old Potatoes have been exceedingly plenty and cheap in our market of late. Some of a fair quality have been sold as low as nine pence per bushel—a price to which they seldom fall at any season of the year, and never before, we believe, in the middle of summer, when they are unusually scarce and high.

On Monday morning last, His Excellency the Lieutenant Governor proceeded in the steamer *Nova Scotia*, to St. Andrews, where he remained for the night, and returned to the City, by the same steamer, the next day.

We have extracted from the *Standard*, of yesterday, an account of His Excellency's visit to the Shire Town of Charlotte County, with the copy of an Address from the inhabitants, and His Excellency's reply thereto.

On Tuesday night, the *Nova Scotia*, Capt. Reed, (which had been specially engaged), started for Windsor, for the purpose of bringing Lady Colebrooke, and the other members of Sir William's family, who were accompanied from Halifax by his Private Secretary, A. Reade, Esq. to this City. The steamer returned at an early hour on Thursday morning; and His Excellency having gone on board from the Hotel, on her arrival, proceeded with his family, by land, to Indian Town, at half-past six o'clock, and embarked on board the steamer *New Brunswick*, Capt. Wylie, for Head Quarters, where they arrived in the afternoon.

His Excellency Sir Charles Fitzroy, Lieutenant Governor of Prince Edward Island, accompanied by his Private Secretary, Mr. George Fitzroy, and the Hon. Mr. Haviland, who had arrived at the St. John Hotel, by land, from Shediac, on Wednesday afternoon, also proceeded in the New Brunswick on Thursday morning, on a visit to Fredericton.

Vice Admiral Sir Charles Adam, has been appointed successor to the late Admiral Harvey, as Naval Commander-in Chief on the North American and West India Stations. Sir Charles, it is stated, would leave England for Halifax in Her Majesty's ship *Pique*, early in August.

NEW VESSELS.

Last week a new Brig, of 200 tons, arrived in our Harbour from the Bend of Petticodiac, of excellent model and superior workmanship, intended for the South American trade.

On Monday, 12th inst., the Steamer Maid of the Mist towed into the Harbour a fine Brig of 200 tons, built by Mr. James Brown, of Quaco.

Launched, on Saturday morning last, from the Ship Yard of Messrs. A. & F. Ruddock, in Portland, a splendid Barque, called the "*Miracle*," of 567 tons.

The above vessels are owned by Messrs. H., J. & D. Mackay, of this City, and reflect much credit on the respective builders, being equal to any vessels ever built in the Province.

Launched, on Monday, from the Ship Yard of Mr. John W. Smith, in Portland, a first class Ship of 750 tons, named the "*Canada*." She is owned by the builder, and, in the opinion of good judges, is not surpassed either in point of model, materials or workmanship, by any of our fine vessels.

A beautifully modelled and substantially built Brig of 250 tons, old measurement, was towed into port on the 18th inst. from the Building Yard of Mr. Abraham Young at Granville, N. S.—She is owned by Mr. A B. Thorne, of this City, and is called the "*William Carson*," and will rank among our finest specimens of naval architecture.

Destructive Fire.—We regret to learn that the extensive Mills and mill-dam, situate on the south-west branch of the Shediac River, in the County of Westmorland, were wholly destroyed by fire on the night of the 11th July, inst. The property belonged to Captain Lawrence Halcrow, of Saint John, and he having only a small insurance effected upon it, will be a great loser. We sympathise with him especially as it is suspected that the fire was the work of an incendiary, ill-feeling having been excited towards Captain Halcrow by some of the parties lumbering on the Shediac River, in consequence of an extensive reserve being made in favour of the Mills. Capt. Halcrow has offered a reward of Ten Pounds, which, it is to be hoped, will lead to the discovery of the perpetrators of the crime.

In a notice in the last Miramichi *Gleaner*, it is intimated, that it would be an act of prudence on the part of the Proprietor to cease publishing at the termination of the present volume, which will be in about two months, if a more willing disposition be not manifested by a large portion of the subscribers to meet his demands, yearly, as they become due.—We trust this appeal will have the effect of stirring up the people in the Eastern part of the Province to a more liberal and constant support of the Gleaner,—a paper on which its Editor and Proprietor, Mr. Pierce, devotes much time and labour, greatly to his own credit and the benefit of the public; and we trust, therefore, he will receive suitable reward for his labour.

"The Register."—On a Supplement which accompanies our present number, will be found the Prospectus of a new paper, under this title, which is about to be commenced at Halifax. The Editor, J. R. Fitzgerald, Esq., is a talented writer, and having for some years been connected with the London Press, is well calculated to make his paper a leading one in the Colonies, and well deserving of support, especially from those for whose benefit it is more immediately intended.

We would also refer to an advertisement of "*The New World*," which appears on our Supplement. This paper is now well known as one of the best mammoth sheets published in the United States. The paper and typography are excellent, and no pains or expense appear to be spared by the publisher to secure copies of new English works of merit, which are in some cases published in the *New World*, before they have been generally circulated in the Old.

Inquests.—An Inquest was held on the 21st instant, before Dr. Wm. Bayard, Coroner, on view of the body of Peter M'Graith, who fell from a scow on the 7th inst.—Verdict, "Accidental death."—Also, on the same day, an Inquest was held on view of the body of John O'Brien, of Black River. Verdict, "Accidentally drowned."—*New-Brunswicker.*

The Lord Bishop of the Diocese has signified his intention to visit, during the present summer, those parts of this Province which he was obliged to leave unvisited last year. His Lordship's arrival may be expected early in August.—*Fredericton Royal Gazette.*

Shediac, July 21st, 1841.—Yesterday the inhabitants of this village were highly pleased to have it in their power to witness *once more* the arrival of a steamer in their harbour. On the boat coming to anchor off the wharf, it was soon pretty generally understood that His Excellency Sir Charles Fitzroy, from Prince Edward Island, was on board. A carriage was immediately ordered, and His Excellency was conveyed to the Shediac Hotel, where, after taking some refreshments, he proceeded on his route to Fredericton, via Saint John. His Excellency is expected to return to Shediac on Monday next to meet the steamer on Tuesday morning. It is to be lamented that the sight of a steamer upon the waters of the Shediac Harbour should be such an unfrequent occurrence. The propriety of connecting these waters with the Bay of Fundy has been the fire-side conversation of the inhabitants of this place ever since it was settled, and the conclusion that they now come to, is, that if the *Tantramar Great Marsh* could be placed between this Harbour and the Bay of Fundy, some steps would immediately be taken for connecting the waters.—*Com.*

From the Weekly Observer.

King's County.—His Excellency, Sir William Colebrooke, during his short stay at Shook's Hotel, in passing through Sussex Vale, on Tuesday last, was presented with the following Address, (hastily drawn up,) from the Magistrates and other gentlemen in attendance. The Troop, under Captain Roach, attached to the second Battalion King's County Militia, was in waiting, and escorted His Excellency a few miles out of the village, where His Excellency was pleased to alight and thank them for their voluntary and unexpected attendance. His Excellency presently resumed his hasty journey, amid a perfect din of cheers and huzzas from the stout lungs of the assembled Yeomen of King's County.

To His Excellency, Lieutenant Colonel Sir William McBean George Colebrooke, K. H., Lieutenant Governor and Commander-in-Chief of the Province of New-Brunswick, &c. &c.

We, the Magistrates and Inhabitants of the Parishes of Sussex and Studholm, in the County of King's, beg leave most respectfully to approach Your Excellency with the assurance of our devoted loyalty and attachment to our gracious and beloved Queen, and a hearty welcome to Your Excellency on your arrival in this Province, as Her Representative.

For this, Your Excellency's visit at so early a period in your administration, we feel truly grateful, and anticipate much from it towards the encouragement of our Agriculture, to which this fertile part of the Province is solely devoted.

The necessity for the improvement of the state of public communication we most respectfully invite Your Excellency's attention to, and will feel abundantly thankful should your tour at the present season be the means of facilitating so desirable an object; and we beg to assure your Excellency, that you will ever find the inhabitants of this County willing to co-operate with any measures having a tendency to promote the general interests of the Province.

We beg to offer Your Excellency our congratulations on the prospect of Lady Colebrooke's arrival, and trust that her Ladyship, with the other members of your family, will shortly reach you in safety.

Sussex Vale, 14th July, 1841.

To the Magistrates and Inhabitants of the Parishes of Sussex and Studholm, in the County of King's.

Gentlemen,—

In acknowledging the Address which you presented to me in passing through your district, I can assure you that I am fully impressed with the important interests dependent on the encouragement of Agriculture and the improvement of the public communications, and I hope measures will be taken for the attainment of both these objects.

In carrying out the wishes of Her Majesty for the welfare of the People, I am gratified to receive the assurance of your support and co-operation, and I thank you for your good wishes for myself and my family.

W. M. G. COLEBROOKE.

St. John, 14th July, 1841.

(From the St. Andrews Standard, July 23.)

Visit of His Excellency the Lieutenant Governor.—On Monday afternoon, the 19th inst. we were gratified by a short and unexpected visit of His Excellency the Lieut. Governor. The instant it was ascertained that he had arrived, several of the magistrates and persons in authority waited on him and attended him about the town, to show him the public buildings and point out to him the best views, &c. He took a hasty view of our block-houses and delapidated fort. We are informed His Excellency expressed himself much pleased with the neat appearance of the streets, the numerous handsome houses, and the general air of comfort that pervades our little town. We observed him conversing very affably with a number of emigrants that have lately arrived from Ireland, and heard him advise them to weigh well the consequence of seeking a home in a foreign country, in preference to staying in the Provinces, which were governed by laws they were accustomed to. He seems very solicitous that more facilities should be afforded the new comers, and more inducements offered the emigrants to settle upon our vacant lands. In his views we most earnestly concur. About half-past 9, all the magistrates and as many of the gentry as could be assembled on so short a notice, waited upon him at Mr. Copeland's hotel, and presented him, through the Hon. Col. Wyer, with a respectful Address, which, with his answer, will be found in our columns of to-day. At 10 o'clock, he and a number of gentlemen repaired to the Hon. Col. Hatch's, where they passed the evening. In the morning he inspected the Court House and Gaol, and there learning the peculiarly hard case of a crown prisoner confined for debt, most kindly, and in a very feeling manner, desired the sheriff to discharge him. His Excellency embarked shortly after in the steamer *Nova Scotia*, for Saint John, amidst a discharge of artillery and the cheers of a great concourse of spectators. The impression remaining on our minds, from what we have heard and seen of his Excellency, is, that few governors will have been more popular than Sir Wm. Colebrooke bids fair to be.

To His Excellency Lieutenant Colonel Sir William McBean George Colebrooke, K. H., Lieutenant Governor and Commander in Chief of the Province of New Brunswick, &c. &c. &c.

May it please Your Excellency;

We, the magistrates and inhabitants of the town of Saint Andrews, respectfully congratulate Your Excellency on your arrival in our town, and beg leave to say, how flattered and gratified we feel by so early a visit.

We cannot refrain from expressing our conviction from the reputation Your Excellency bears, for energy, activity, and abilities, that the Province will derive much advantage from your government.

We assure Your Excellency that no portion of Her Majesty's subjects in this Province exceed us in loyalty or obedience to your wishes.

We are happy to have it in our power to felicitate Your Excellency on the safe arrival of Lady Colebrooke and family from Europe, and we earnestly desire Your Excellency's health and happiness.

[Signed by the Sheriff, Magistrates, and fifty or sixty gentlemen.]

To the Magistrates and Inhabitants of the town of Saint Andrews.

Gentlemen;—Being fully aware of the general character and spirit which has so long distinguished your community, I am gratified that circumstances have enabled me to visit you at an earlier period than I had looked forward to, and thus to manifest the interest I take in your prosperity.

In the extensive tour from which I have recently returned, I have had many opportunities of witnessing the success with which the natural resources of this fine Province have been improved, and, from the advantages of your position, I cannot doubt that, under due encouragement, your settlement will continue to prosper.

For my own part, I can assure you, that I shall at all times be gratified in promoting your views to the utmost of my power.

I request to return to you my sincere thanks for your good wishes and for your congratulations on the safe arrival of Lady Colebrooke and my family.

W. M. G. COLEBROOKE.

From the Woodstock Telegraph, July 17.

Attention is directed to an article copied from the Bangor Democrat on the subject of Madawaska. It would seem that the plan suggested by that paper is about to be carried into operation. Reports are very currently in circulation this week that two companies of American Troops have gone to the neighbourhood of the Restook, one to Fort Fairfield, and the other to Fish River. We cannot vouch for the correctness of the report but merely give it *on dit*. If such be the case, we expect to hear of the return in a few days of those troops that lately left the Madawaska.

From the Bangor Democrat.

Madawaska.—We understand that the British have assessed a money tax upon the citizens of the American town of Madawaska which they will soon proceed to collect.

If the Yankees there refuse to pay this tax to a foreign government they will probably be forced into a British jail as usual when they are refractory and "*rebellious*." Shall they not be protected?

Although the Frenchmen have heretofore paid a small road tax, we believe this is the first money tax the British have imposed on these people. Be this as it may, it seems to us that the duty of this State to protect its citizens is unmistakeable. If the British undertake to distrain property there or arrest the citizens they should be promptly and effectually resisted. If British officers appear with warrants they should be met by American officers and taken into custody or be compelled to abandon their purpose. The Sheriff of Penobscot should be sent to Fish River provided with a sufficient posse to afford protection to the inhabitants. And if the British bring their troops to the aid of their civil officers, we should do the same. We do not perceive how protection can be withheld without a plain neglect of duty and deep dishonor. We hope the Governor has sufficient firmness to stand by the people and protect the State.

Halifax, July 21.—A Rowing Match worth talking about, will come off in September in this harbour. It will be between a Halifax, Saint John, and New York Boat. Each party is to stake one thousand dollars, and the winner to take the sweepstakes. The Halifax gig will be built by Mosley.—*Herald.*

Rumour, with her thousand tongues, says that the Hon. Joseph Howe is to receive the General Colonial Secretaryship, at the hands of the Governor General, and will take up his abode in Canada.—*Halifax Post.*