SECOND DAY.

On Tuesday, the evidence on the part of the prosecution was continued. Eight witnesses were examined with reference to the circumstances of the attack, five of whom were on board the boat at the time, and the others at the tavern at Schlosser. The facts as elicited by this testimony were much the same as those given by Mr. Wells, the owner of the boat. Capt. Appleby, the commander of the boat, is the only one of these witnesses who makes any attempt to identify M'Leod as present. His evidence on this point, as reported for the Albany Journal, is this:—

I saw the man who made a thrust at me with a sword on board the boat; a lamp was hanging two or three feet from the door; at that time *I supposed the man to be M'Leod;* I had been introduced to him a few days previous at the Eagle Tavern, in Buffalo; I was examined before a magistrate at Schlosser the day after the affair; my attention was particularly drawn to this point; I then said I thought it was M'Leod, but it was all done so quick, that I could not be certain.

On the cross-examination he added: at the same instant the thrust was made at me, I drew back to avoid the blow; all was done and the door shut almost in a moment; I did not distinctly mark the features of the man; I do not now say it was M'Leod, received no injury from the sword thrust; since the night of the attack has never seen or heard of a boy called "Little Billy," who had been on board the boat. But on the cross-examination, it appeared that he had not seen him since the boat last left Navy Island.

These witnesses agree in stating that there was but one gun fired from the American side, that that was discharged after the boats had left the shore in such a direction that Durfee could not have been injured by it. One witness, indeed, testifies directly that he saw the gun loaded, and that there was no ball in it.

Two other witnesses were examined who were on the Canada side at the time of the attack.—These witnesses were introduced, to show that M'Leod went with the boats, That part of the testimony of Drown, the first of them, which bears on this point, is in these words:

Samuel Drown sworn—I know M'Leod, I had known him three years prior to 1837; I first knew him at St. Catherines; he lived at Niagara, twelve miles off; I used to see him very frequently; he was Deputy Sheriff; I saw him act in that capacity at the courts; saw him very often when I lived at Chippewa; *I saw him at Chippewa the day and evening prior to the burning of the Caroline;* saw him the night after the Caroline was on fire. After the return of the boats from the destruction of the Caroline, I was close by the men when they disembarked; should think there were 10 or 12 in each boat; I should say *M'Leod was one of them;* I was about 10 feet from the boat and from M'Leod when he got out; the men went up to Davis's tavern in the village; I went along with them; they were talking with others about the destruction of the Caroline; they stopped in front of the tavern; I believe there were lamps lit in front of the house and others in the house; *I then saw M'Leod again;* I was then within eight or ten feet of him, he stood about ten feet from the door; I heard him talk to the standers by; *I am as sure that it was M'Leod as I am that he now sits before me;* some entered Davis's, some went with me to Smith's, between daylight and sunrise; some one came into the bar-room and said M'Leod was standing on the steps, and that he was wounded; I said, "no he is not wounded;" I saw him but last night; I looked out across the road to see; he had not his arm in a sling as they told me; he was standing on Davis's steps; M'Leod had a belt on and a sword or cutlass by his side.

On the cross-examination, witness stated that the night was dark and that there was no light near when the boats landed.

The other witness, Corson, was at the tavern after the men had gone up from the landing. He says,

I next saw M'Leod about 9 in the evening at Davis's tavern; he was coming out of the bar-room as I went up; did'nt observe as he was armed; one man went out with him; I again saw him next morning about sunrise on Davis's stoop; quite a crowd was around him; he stood on the platform telling what was done on the Caroline; he said—"*he guessed they would not want to see him over there again very soon; he had put one d—d Yankee out of the way;*" I can't recollect any other particular expression; persons in the crowd around him were also boasting of having been in the expedition with M'Leod; no one there disputed with M'Leod or said he lied.

THIRD DAY—*Wednesday*.

Charles Parke, sworn. I am a native of Canada. I was tending bar for Mr. Davis at that place at the time of the destruction of the Caroline.—I had then been with Mr. Davis three or four months. I know the prisoner M'Leod, have known him a greater portion of the time he held the office of deputy sheriff of Niagara district. During the afternoon preceding the destruction of the Caroline, I saw him at Chippewa. I saw him a number of times during that day, and toward the close of the day. I saw him also after dark.

A gentleman came in and inquired for him between 8 and 10 o'clock in the evening, and he was shown to M'Leod's chamber—he having retired to bed. M'Leod got up, dressed himself, came down into the bar-room, and told Mr. Davis that if his, M'Leod's, brother inquired for him, to say that he was gone to Niagara. About half or three quarters of an hour after that, I saw him again, between Davis' and the Chippewa Cut. There were a number of persons about and near him, but whether they were in his company or not I cannot say.

After that I saw him and some hundred more by the side of some boats on the bank of the river; some got into the boats, but afterwards they got out, and towed the boat about three-quarters of a mile, where they embarked on board the boats and shoved off from the shore: they steered across the river, but I do not know where they went; the boats were towed up empty on account of the current; this occupied about an hour, and then I returned home and went to bed, leaving up Mr. Johnson, who was also a bar-tender in the house, I have not seen Mr. Johnson lately, but understand that he is at Detroit.

The next I saw of M'Leod was about sunrise the next morning, when I saw him on the square in front of Mr. Davis's house. There were a number of people not far from him, but none very near him, nor do I know that any one was in his company. If I recollect right, on the previous evening he wore a sword by his side. I have heard him say something about the Caroline. A few days after, a number of them were conversing about it—Capt. Stennett was one, Major Cochran, of dragoons, another, and four or five more; and M'Leod said, in purport, that he had killed a Yankee.—Their conversation was in reference to the Caroline. I can speak quite positive about M'Leod's getting into the boat.

Cross-examined by Mr. Spencer.—Where was M'Leod when he was boasting? In the mess-room. Where was the mess room? Over the bar up stairs. What did you hear any other one say? Well they were talking. What about? Can't say exactly. Can you not tell what they said as well as what M'Leod said? Well, it was something about that. Which one was it? Can't tell—they talked all together. How long were you in? Perhaps five minutes, perhaps more. Can you not be more precise? No—I didn't keep a time-piece. What did you go in for? I was called in. What for? To bring in beer or liquor. Where were you on the evening of the 29th? As to dates I can't say. What day was the Caroline burned? Don't know the date. When after that did you leave the house for any length of time? Can't recollect particularly, I suppose it must have been a month after. Did business keep you so confined? Yes. Was the 29th a busy day? Every day was. Was it a dark night? Not very light, nor very dark. Was there moonlight? I think not. Did you see the Caroline destroyed? No—but I saw her on fire. Indeed, how long did you stand on the shore after the boats left? Oh, I staid about for an hour. Who returned with you? Nobody. How many boats were there when they started? I don't recollect whether they all went up the river—there were eight boats altogether. Any light about the boats? No. In which boat did M'Leod go aboard? Can't say he went in them at all. Who else there did you know? I saw three or four. Who?

[The Attorney General here interposed.—He thought it hard that after striking out such questions from his interrogatories, the counsel for the prisoner should go the length of asking such questions of his (the Attorney General's) witness.]

The Court.—The only object can be to test the accuracy and integrity of the witness, and in that case such questions are proper.

Who did you see in the boats? Oh, I know one—M'Donald. How near were you to M'Leod? Five or ten feet. Did you speak to him? No. Did you hear him speak? Yes. What did he say? Something about getting into the boats. Did you look M'Leod in the face? Yes. What occasioned that? I am in the habit of looking people in the face. What boat did M'Leod go aboard? I can't tell. Was it the same boat with Drew? Can't say. In the same boat with MacDonald? No. Did all the boats cross the river? No—they did'nt all leave the shore. How many left the shore? Seven. How many were left? One. What became of it? I don't know. What boat did Drew go in? A boat about the centre. Did you see Col. M'Nab that night? I don't know him. This was the last you saw of the boats? Yes. When did M'Leod go on board? About the centre boat. Sure of that? Yes, it strikes me he did. Were you familiarly acquainted with M'Leod? Yes. Done business with him? Yes. Was M'Leod accustomed to carry arms? Yes, I have seen him wear arms. At Chippewa? I don't remember. Where did you see him with arms? Once, at the Falls. Is it customary for sheriff's deputies to carry swords? Oh, I suppose not, unless on some expedition attended with danger. When did you first mention what you knew of this matter, and to whom? I can't say. Who came after you to come here? No person. How came you? I had business at Buffalo, and was subpœned there. When—Last Monday morning week. Had you been spoken to before about coming here—Yes. By whom—By several. Who—

[The Attorney General interposed. He saw nothing to warrant such extraordinary procedure. He protested against going into such details, although the witness was perfectly willing to answer.

The Court considered the question proper.

The Attorney General asked the Court to protect the witness from disclosing names which might prejudice persons as much as similar disclosures would have prejudiced others on the opposite side.

The Court remarked that however individuals might be prejudiced, every thing important on the trial must be given in evidence, and as the answer now sought might be important, the question was proper.]

Cross-examination then proceeded. Who asked you to testify against M'Leod.—A person religiously opposed to taking up arms. I was spoken to a week before I came across to Buffalo. I said I was then on my way.

Henry Myers deposed that he lives near Canadaigua, works on a farm; once resided in Canada; is a citizen of the United States by birth; has seen the prisoner before the trial; returned from Canada shortly after the Caroline was burnt; saw the prisoner twice in Canada; once at Saint David's and once at Niagara in a tavern on the north side of the road, where he stopped to bait his horses; went into the bar-room; saw there a number of soldiers; some had weapons; some had not; there was some talk about the man that killed Durfee; one said "Where's the man?" M'Leod said, "Here he is—*I'm the man!*" He then pulled out a horseman's pistol and said it was this pistol that shot him. Then he pulled out his sword and said, "there's the blood of a d—d Yankee!"—holding on the sword. There was blood on the sword; on the end for about four inches; it was day; witness went out to feed the horses; two or three followed him out; they asked him where he was going; witness replied he was going to Geneva, as his wife did'nt like Canada; some of them said witness was a d—d Yankee, and the prisoner said he was d—d rebel and should'nt go any farther; witness staid under the shed some time, and at last the prisoner said if witness had a mind to treat the company he might go home; witness said he would'nt mind doing that; then went into the bar-room and treated to the amount of a dollar; then was allowed to go and proceed on his journey. Has not since heard the prisoner say any thing of this matter.

Cross-Examined by Mr. Spencer.—There were twenty or thirty persons in the bar-room, where M'Leod boasted of shooting Durfee. Left Canada on account of the trouble; first told what M'Leod said on getting to Canadaigua, on account of a good deal being said about it; one Sherman and one Buskirk were present. Did you hear M'Leod called by name? I did—By whom? I don't know—Had you seen him before his name was called? No—How was the name called? Under the shed one called him Alexander and another called him Sandy M'Leod—Did you hear his name called any where else? No.

By the Court—Did the person calling him speak to M'Leod? What was the form of expression? He said, "Alexander M'Leod is it best to let him off or not." What answer was given him? He said "if he treats we will let him go."

By Mr. Spencer—How was the other name introduced? I said—"I had nothing to do with either party, and would'nt mind treating"—and then the man said—"Sandy M'Leod, let us go in and take something."

Can you be more particular in fixing the day it was after the burning of the Caroline? No, I can't. Was his name mentioned at St. David's? Yes. Where had M'Leod the sword? Under his coat in a belt. What kind of a sword? A short one. Did you see more than one pistol? I believe not. Was it bloody? No, I think not.—Had you ever heard what sort of arms the men had who went against the Caroline? No, sir.

In answer to Mr. Hall—I have no doubt that the prisoner at the bar is the man I refer to in my evidence, for I took particular notice of him, as I determined if ever I caught him on the American side I would use him as he used me.

Calvin Wilson.—I reside in the town of Wilson, Niagara county. Know M'Leod. Have seen him and know him well by sight. Was in Canada in the fore part of January, 1838. Owned and kept the ferry from Youngstown across the Niagara river. It goes from Youngstown to the town of Niagara. Recollect seeing M'Leod between the 5th and 15th January, 1838. Saw him at James Miller's house, in the village of Niagara; quite a number of people were with him; knew one of them named Raincock, and Mr. Miller. Think I saw John Mosier there, and a young man named Meredith, whom I wanted to see, and a gentleman who was called Elmsley. Did not know him, however. They were in a sitting room in the public house. The subject was brought up about the destruction of the Caroline by Mr. Raincock, and how many there were that were killed, murdered or burnt.—M'Leod then replied, "*he thought there were not more than three or four, and did not know but five,*" *and one thing he said he did know, that there was one d—d Yankee, or rebel, got shot on the wharf.* Then he said something further, but I don't exactly recollect what it was. Believe I did not understand what he said further. Don't precisely know what he did say. Mosier did not say any thing. Believe Elmsley said nothing on the subject.—Think I have stated the substance of what M'Leod said on the occasion. I recognize in M'Leod the person who spoke as I have stated. Have no doubt he was the man.

Cross-Examined.—Had formerly seen M'Leod at Niagara. Had seen M'Leod frequently, and knew him well, and know he was the man I saw there. Am as sure I saw M'Leod there as I am that I saw Raincock there. Raincock asked M'Leod if he knew how many had been killed or destroyed on the Caroline. He addressed himself to M'Leod, I thought. Was in there ten or fifteen minutes. Don't know as I said any thing to any one there, except to ask if Meredith was going to be collector of the port. I have told what I knew of this only since I came to Utica. I was subpœnaed, but don't know how I came to be; I did not ask to be summoned; I don't know but I might have mentioned this at the time, but not since M'Leod was arrested. I think I told of it the same night to a man named Christopher Herres. I don't remember any other person now to whom I told it. I have not taken any very great part in the patriot affairs. Have taken an interest in the movements against Canada, since the destruction of the Caroline. Have assisted the Canadian Refugees by giving them what little I had to spare. Have not given any great amount. At a rough guess I dare say I have given about $200. Have frequently had some of the Refugees at my house. Can't particularize any one. There were some of my own name-sakes, and some others.

Counsel for the prosecution interrupted the witness, and remarked to the Court, getting up an enterprize in this State against Canada was a criminal offence, and that the witness was not bound to tell any thing that might criminate himself.

Judge Gridley—Addressing the witness, said the aiding, assisting, or in any way promoting a military enterprize against Canada, is an offence against the laws of the United States, and you are not obliged to answer that question, if you think the answer would convict you of such a crime, or form a link in the chain of testimony that would convict you.

Witness—I decline answering.

Elijah D. Effiner sworn: I reside in Buffalo; recollect the Caroline steamboat; was on board of her at Schlosser. The accommodations being poor at Schlosser, I applied on board for lodgings. This was between two and four of the afternoon preceding her destruction. I went through her and found no arms, and asked the people on board how they expected to defend themselves if attacked. They said they were a ferry boat, and not allowed to carry arms. I was a marshal, deputed specially to preserve the peace at that time. I saw some persons come on board with arms in their hands. They were strangers; not Americans; they told me they were from Lower Canada. They wore Canadian caps. It may have been my duty as a marshal to see who they were that induced me to inquire of them.

Cross-Examined by Mr. Spencer.—I had before heard of hunting on Navy Island; but don't think the hunting there could have been very good at that time. I saw no artillery carried over. I knew nothing of the commander on Navy Island, except by repute. I was not over on the Island, nor do I know whether M'Kenzie was there. Do you know of arms being taken there; if so, how many? Yes sir; I heard——Mr. Hall interrupted the reply and objected to the question.

Seth Hinman.—I reside at Youngstown, Niagara county; was in Chippewa in December, 1837, and was working as a joiner there; remember the destruction of the Caroline and was in Chippewa at the time. I know M'Leod; have seen him frequently at Chippewa and Niagara before and since the destruction of the Caroline; saw him that evening at Mr. Davis's, about 7 to 9 o'clock. It might have been as late as 9, or later; saw him pass thro' the bar-room, there were a good many people there. I saw him the next morning, it might have been about sunrise. There was not a crowd of men round him. He was in front of Davis's, in the square; heard him say nothing. He was walking towards Davis's; did not observe if he was armed at that time; think it was before sunrise. I heard of the burning of the Caroline from four men who came in to get something to drink, and went down to Davis's to hear about it, as they appeared to be much around there.

Cross-Examined.—I live now in Youngstown; I last saw M'Leod on that night as late as 9 o'clock; it might be later or earlier. I attended bar at a place about 80 or 100 rods from Davis's. It was pretty busy times there. I went down to Davis's to hear the news, as I had been used to do. There was not so many came to Cavannah's, (where I tended bar,) as there did to Davis's, and therefore I could hear more there than at C's. I was at Davis's at 7 or 9 o'clock. I was up there the evening before merely to hear the news. There were a great many soldiers there, and strangers coming in. Was there again the evening after the destruction of the Caroline, but can't tell whom I saw there. The reason of my noticing M'Leod particularly was, because I had seen him arrest people and seen the way he used them, and I watched him pretty close. Have never been able to contribute towards the assistance of the Canadians.

Q. Are you a member of any secret association in this State or the United States whose object is to promote or carry on any enterprize against the Canadas, so as to produce a rupture between the two countries?

Mr. Hall.—Independent of any reserve on the part of the witness, I solemnly protest against this Court being made instrumental in getting out testimony, having no bearing on this case, and only intended for another purpose.

Mr. Spencer said, this is not the first time the Attorney General has insinuated that counsel for the prisoner were seeking to get out testimony for other purposes. And I now rise to answer that observation, and also his objections against the competency of the evidence which had been offered, and now say before the court and the audience, that I neither purpose nor desire to put any questions or elicit any facts which have not a direct bearing on the case. I am not here on the part of the United States to procure testimony to that government, as the insinuation of the Attorney General would imply. And if I know any thing about the trial of a man for his life, it is essential that the Jury should believe the testimony. And I ask the Attorney General, can the Jury be as ready to believe those men who have been so active in enlisting men and getting up enterprizes against Canada, as they would the testimony of a respectable citizen from Buffalo. I believe that those associations exist from the 45th degree of North latitude to the entrance of Lake Huron. I believe the man on the stand to have been engaged in getting up hostilities against Canada, and am I to be told that I can't enquire into it?

The Court said that no testimony could be admitted except what had a legitimate bearing on M'Leod's guilt or innocence.

W. Caswell—Was on the Canada side. He says M'Leod come from towards Davis's barn; heard him talking; I was about ten feet from him; I heard him say in substance that the Caroline had been handsomely cut out—he said, "we made the d—d rebels run;" the men around him were also talking of their exploits; one said they left one dead man on the dock; M'Leod had a large pistol in his hand at this time.

Anson D. Quimby was at Davis's tavern. He says he was particularly acquainted with Alexander M'Leod; I think I saw him the night the Caroline was burnt; saw him at Davis's about eight o'clock; he was coming out of the bar-room as I was going in; I did not see where he went; saw him again the next morning about sunrise; he was near Davis's house, not far from the end of the bridge that crosses Chippewa creek; some persons were with him—did not know them; think M'Leod had a belt on; don't know that I saw any arms; some one came across the bridge and asked how they made it go last night? He said, "we made it go very well—we killed one or two d—d Yankees and destroyed the boat"; he also said, "I have Yankee blood on my sleeve." I did not see any blood; I then went away; don't know that I ever heard him talking about the affair at any other time.

Justus F. Stevens—I am positive I saw M'Leod get in one of the boats at that place; the men that got in the boats were armed; M'Leod had a sword—don't know whether he had any other arms: they then went out into the river and laid for across the river; I saw three boats; am confident there was only that number; I again saw M'Leod on his return a short distance above the mouth of the cut; the boats were then coming towards the shore; this was about three o'clock; M'Leod came ashore then and a part of the men; the men that left, went up towards Davis's tavern; M'Leod got out of the boat about four or five rods from the mouth of the cut.

In the cross-examination several questions were asked relative to the "sympathizing" movements of witnesses, and the answers to these, although the counsel for the prosecution protested warmly against such interrogatories being put, in which protest they were supported by the Court, showed that many of the witnesses were "patriots" of the first water.

The Court, which shows throughout an earnest desire to restrain the examination within proper bounds, also animadverted severely on the introduction of a great deal of hearsay evidence by the prosecution, and one witness was ordered off the stand because he had no other evidence to give.—The following conversation will explain the manner in which some witnesses bear their cross-examination:

Mr. Spencer. Are you a member of any society whose object is to aid the Canadian refugees or to bring about a war with England? Answer. I think I am not. Q. Did you ever belong to any association of the kind? A. I once belonged to a Temperance Society. Judge Gridley—Witness, if you ever answer a question in that way again, you will be committed instantly. You must not trifle with the Court. You understand the question—now answer it. I know what is meant by a "Hunter's Lodge"; think I have been in one two or three times; this was about two years ago; it was at Niagara Falls; don't know that I ever heard any thing said in them about procuring arms or ammunition.

Leonard Anson deposed as follows—Resides at Niagara Falls; was in Chippewa in December, 1837; remembers the burning of the Caroline; I was at Smith's house during the attack; remained in the house till morning; saw M'Leod there in the morning; knew him personally; he was well known there as deputy sheriff; there were a number of people in the bar-room who were talking of the expedition, and who had done the greatest deed; the persons spoke as if they had been in the expedition; heard M'Leod say, "we killed one d—d Yankee, and here's the blood." Heard nothing else in particular said; there was a kind of dispute amongst them who had done the greatest deed, but none of them dissented from what the prisoner said; staid there some time; knew of the destruction of the Caroline before that morning; knew it the night before; the sentinel told him; was driving a team at the time of the outbreak; gave up that because he could'nt get pay; is now employed by Mr. Porter.

Cross-Examined by Mr. Spencer.—Has no connexion with the patriots. No "patriot" feeling? No more than American citizens would have.

The foregoing is only a brief report of the examination of the witnesses, on the part of the prosecution, but it contains all the essential points.—When the examinations were concluded,

Mr. Hall announced, that the case for the prosecution would be here rested for the present, with the distinct understanding, however, that no further evidence as to the main charge, would be hereafter introduced, the counsel for the people intending to confine himself to a bare refutation of such portions of the prisoner's evidence as may be necessary.

THE DEFENCE.

The case for the defence was opened by Mr. Spencer as follows:—

Gentlemen of the Jury—I will endeavour to open this defence in the manner which has just been suggested by his honor the Circuit Judge, because it is precisely the way in which every defence should be opened, and from which the jury can best appreciate the evidence to be brought before them. I need scarcely say that this is a case of no ordinary importance. It is the first of the kind that you have ever tried, or, in all probability, will be again called on to investigate. A solemn duty has devolved upon you, and I have not the smallest doubt that it will be fully and faithfully discharged.

The defence which we intend to make is twofold and I will place it before you in its double aspect thus early, in order that the Court may be prepared to direct our conduct of the case as it may think proper. In the first place, then, we will inquire whether any murder has been committed at all; and secondly, if that question be answered in the affirmative, whether Alexander McLeod was one of the murderers.

The first portion of our defence we shall conduct with all deference to the opinion of the Supreme Court. which the learned Attorney General referred to so fully in his opening. We are no strangers to that opinion, nor to the questions presented on the argument which drew forth that opinion; and if the learned gentleman opposite really supposes, as he said, that the counsel of the prisoner sustained a rebuke when that opinion was delivered, I avail myself of this early opportunity to say that the counsel for the prisoner have never felt the justice of that rebuke, and it yet remains to be shown that that opinion administered any just rebuke.

There are some things in that opinion on which, when I first heard them within this very circle, fell upon my ear as very strange, but there is also very much of that opinion to which I listened with great pleasure. That document is ably written—it contains the evidences of great research and profound legal learning, and it may present the sound law of the case. But whether it be the sound law of the case or not, and whether the learned judge who now presides on this trial will so regard it, I know not, but I feel bound to conduct this case on the broad grounds of what I consider the true principles of the law, as applicable to it.

We shall then, in the first place, after a few more facts shall have been made to appear in evidence before you, insist that there can be no such offence as that of murder proved as growing out of the destruction of the steamboat Caroline. And here allow me to say that in the whole course of my reading—limited, I admit, it has been—and in all my experience, I never knew of a similar case. It is now for the first time that we see an individual acting under the authority, and by the order, of the government whose subject he was, put on trial for obeying those orders. This is, indeed, a remarkable occurrence, almost at the end of the first half of the 19th century! As the counsel of Alexander McLeod, then, I shall have occasion to contend that there can be no such thing as murder charged against any of the persons who formed the expedition sent to destroy the Caroline. And let me here add, that the question whether that act was a justifiable proceeding or not on the part of the British provincial government, cannot be entertained by you.

The facts, gentlemen, to be adduced will show that the party which made the attack upon the Caroline consisted of the crews of seven boats, six of them containing eight persons and one containing nine, and was made up of British provincial soldiers then on duty at Chippewa, or British naval officers then on duty at Chippewa—that Colonel McNab ordered the expedition—that he acted under the authority of Sir Francis Bond Head, the Provincial Governor, who directed them to seek out and destroy the Caroline, which he then believed to be in the employment of the party on Navy Island, who had there raised the standard of revolt, fortified their camp, and opened their batteries on the Canadian shore.

When this party was thus circumstanced, and at a season of the year when navigation by any other vessel was extremely perilous, that boat came down for the express purpose of being employed by the occupants of Navy Island, and in their service that boat was from day to day engaged. The boat was then as liable to destruction at Schlosser, as if she had been moored at Navy Island, so far as respected individual responsibility. Indeed it is now proved that Schlosser was the very rendezvous of the party of the invaders of the Island or of those who were continually carried over to the Island.

We shall contend then, that the boat while at Schlosser was there for as hostile purposes as if at Navy Island, and that the British authorities were therefore, as much justified in destroying her there as if she had been at the latter place, and I ask every American citizen if he would have regarded the destruction of the boat at Navy Island as an offence? Might not the Island have been justifiably invaded and the persons on it taken prisoners and slaughtered without the persons so invading it being chargeable with the crime of murder or any other offence against the laws whatever? Whether the insurgents on the island were right or wrong is wholly immaterial. Whether the British government had been tyrannical and had driven those people to desperation is wholly immaterial.

The Canadian subjects of Great Britain had seen fit to revolt, and with the aid of American citizens had made open war in Canada, and whether they were right or wrong it was a war, and all the rights and immunities that belonged to those engaged in war, pertained to them. We will show to you, that the government of the United States took the view of the case that they took the cognizance of this offence, and demanded reparation from the government of Great Britain; and that at a later day the British government acknowledged the responsibility of that act, and declared that it was done in obedience to the British provincial government, and justified it as a necessary act for the protection of the subjects of Great Britain then living in Canada.

The Federal Government then, under the constitution, had taken full cognizance of the whole matter, embracing not only the invasion of our territory, but also the destruction of the steamboat, the property of one of our citizens, and the taking away of the life of another. All those considerations were presented to the notice of Great Britain, and our government, mindful of the nation's rights, and ready to vindicate them, had demanded full and entire satisfaction for the injury which our country has received. But the individual who formed part of that public force of Great Britain, stands excused, as he always must, from all the consequences of his action under those orders.—As an individual offender he is not amenable to any tribunal.

Passing from this I will now take up another branch of the case, on which I am well persuaded the intelligent judge who presides here and myself shall have no difference of opinion, whatever may be our respective views of the other features of the case, and the tenfold more deeply interesting question of constitutional right—and that is the point as to whether McLeod had any thing to do with the transaction or not.

I am willing, and I intend to call your attention more minutely to the evidence sustaining that ground of defence, than to that pertaining to the other position which we have assumed. Because the evidence sustaining the latter is not in any degree susceptible of dispute. Every word of evidence given on the part of the prosecution has gone to establish our case, and what is yet to come will only comprise what has been shown already. But the point to which I call you now is that Alexander McLeod had no more to do with the destruction of the Caroline, or with the killing of Durfee, than either of you, gentlemen of jury. Not any more. And I speak with knowledge of the facts, and will satisfy you that what I have now said is fully and literally true.

I confess that I am somewhat surprised by the results of the trial which we have seen. I anticipated much greater strength on the part of the prosecution I will say to the Attorney General—if I am honoured with his audience—I will say to his associate that I am astonished at the feebleness of their case, conducted as it has been with such an array of talent. Without making any extravagant pretensions to that sort of skill in matters of this kind, yet I would venture fearlessly to enter on the argument on the evidence, as it now is before you without the slightest dread of a verdict against my client. But I am not at liberty to play at haphazard in such a case as this. I have here to defend a man whose life is as dear to him as yours is to you, and to whom you are bound to give a fair trial, a patient hearing, and a faithful and impartial verdict, just as much as if he were an American citizen. I ask no favour at your hands because he is a foreigner. We expect nothing whatever from your hands on account of the difficulty in which your verdict may place the governments of the two countries. We ask only that you will listen to the evidence, cautiously weigh it, and then pronounce whether Alexander McLeod is a murderer or not.

First, then, we will lay before you a mass of evidence taken by commission under the order of the Supreme Court, which, singular as it is, has been attended to in the execution by gentlemen on both sides. And here let me remark, that the opposite counsel have enjoyed all the advantages which a perfect knowledge of our whole case from beginning to end could afford, while we have been kept in profound ignorance of their's; yes, had they enclosed their case in the hecatombs of Egypt it could not have been more vigilantly concealed from our view. None of the new witnesses who are relied on to sustain the prosecution went before the grand jury. There may be a few exceptions, but I believe my assertion will be found to be correct.—and permit me to add, that in my judgment if this case were tried as often as the moon changed, new witnesses could be found to prove the case as strong as it has been now presented on this trial. But the commissions have been returned and the evidence will be read before you.

With a great deal of pains and perseverance my respected colleague succeeded in finding some men more or less, who were on board each of the boats which formed the expedition against the Caroline. Twelve or so of our witnesses are of this description. First on the part of the defence we have Colonel McNab, who proves the issuing of the orders to Captain Drew, the individual who had command of the expedition. Colonel McNab states that the expedition, when planned, was a profound secret, unknown to any except himself and one or two confidential officers. The party collected on the shore and went on board the boats, and then the purpose of the expedition was declared, when the party was on its way to accomplish its object.

When the expedition returned, Colonel McNab ordered a list of all the men engaged in the expedition to be made out, intending to bestow upon them some mark of approbation for their hardihood and successful conduct of the expedition. And here let me say, that however we may regard this transaction, the provincial government of Great Britain looked on that as a gallant achievement. But whether they rightfully or wrongfully appreciated the undertaking is perfectly indifferent to us.

To return, however. In the list thus made out, the name of McLeod—either Alexander or Angus—does not appear. Colonel McNab also says that he was on the shore when the expedition embarked, and that he did not see McLeod, whom he knew most intimately. Then every boat's crew was acquainted with each other, and they respectively testify that McLeod was not among them. And it was surely likely that the members of every little party would know each other. This is in substance the evidence which we have taken on commission, and that will be first laid before you in our defence. You will listen to that reading with attention, although it may not be so satisfactory as the evidence of witnesses who would be before you personally.

But we will also produce before you living witnesses who will speak of what they know. By a Mr. Hamilton we will show that the Reynock of whom Wilson spoke as being present with McLeod between the 5th and 15th of January was absent in Europe, and could not possibly have been present at the place described by Wilson. With respect to Quimby, we will show you that a short time ago a letter was received by the postmaster here from a gentleman of respectability in Warren county, Pa., who hearing of Quimby's intention to come here as a witness, and knowing his character, wrote a warning as to his worthlessness; and acting on the information, I wrote to two worthy citizens there, who have come here to speak to Quimby's character. This Quimby you recollect is the fellow who sold his load of hay and went to get payment before daylight of the commissary.

We will then show you, gentlemen, that McLeod was at Chippewa, in Davis's tavern, on the day of the destruction of the Caroline—that he went to bed early, as he was fatigued, having been one of the party who rowed round Navy Island. He remained in bed till sun down, when he rose. We will then show you that he went in company with Mr. William Press, then living at Niagara, and now keeping the "Hamilton House" in Hamilton, Canada, and in his company McLeod left Davis's tavern and rode to Stamford, about five miles distance, in a very bad state of the road, where he got out of his waggon, concluding he would tarry over night with Captain John Morrison, a retired British officer in Canada.

He left Chippewa in company with Mr. Press after dark on that day. Well, he got out and went into Captain Morrison's, and we will show by that gentleman's evidence that McLeod came to his house—that he sat and conversed till about midnight—that then they retired to bed—that he Captain Morrison) rose early in the morning as was his custom—that Mrs. Morrison arose—and their son, a little boy of 15 years of age—that the lad went down to the gate in front of the house—that he saw there two gentlemen, who stopped as they passed, and asked the lad to call his father—that Captain Morrison went down, and there found some one whom I don't now remember, with Col. Cameron who lives at Toronto, and is an elderly gentleman, and is not able to be here—that these gentlemen asked Morrison if he had heard the news, and on receiving his reply in the negative, they told him of the burning of the Caroline, and gave him as a trophy a fragment of the boat which they had found in an eddy below the falls.

Captain Morrison returned to the house and found Mr. McLeod at his toilet, and to him he told the intelligence he had just received. McLeod wished to go immediately but was prevailed on by Mrs. Morrison to remain for breakfast—Mrs. Morrison will show this and also that Mr. McLeod's boots, which had been wet, were placed at the kitchen fire, where they remained all night, and in the morning were put on dry by him. Miss Morrison also, step-daughter I believe of Mrs. Morrison, is also here. She is an intelligent lady, and she will corroborate the testimony of her relatives.

To recur to the testimony of Press to show that he cannot be mistaken in the day, he says he was at Chippewa but once that winter. He lived at Niagara, where he kept a public house, and he says that he took two passengers from his house that day—that their names are on his books, and the compensation he received from them entered upon his cash book, under date of 29th December.—But farther he will tell you that he heard of the destruction of the Caroline on the next day about 10 o'clock—thus fixing beyond all controversy the day on which McLeod was in his company.

We thus take McLeod from Chippewa early in the evening to Captain Morrison's, where he passed the night. Then in the morning he rode to the Pavilion at the Falls, and during that time we have no evidence that any one saw him—but at the Pavilion he fell in company with a person who is here—an officer of the provincial government, and from the Pavilion he rode with McLeod to Chippewa, conversing about the destruction of the Caroline, and they reached Chippewa about 9 or 10 o'clock, and then rode up the Niagara river to where Capt. Usher lived, the gentleman who was murdered at his own door, and while on their journey they were fired on from Navy Island, one ball falling directly at the edge of the river, which was handed to McLeod when he was returning. Shortly after leaving the Pavilion they met a gentleman—Mr. McLean, of New York, who had spent the previous night at Chippewa, and in company with another person was riding down the Niagara river toward the Falls, when they met Mr. McLeod, whom Mr. McLean well knew and had seen in Buffalo a few days before, when Mr. McLeod was assaulted there.

Now gentlemen of the jury this evidence will be laid before you, and I question if it will be at all necessary for you to embarrass your minds with the examination of the previous question as to whether murder was committed by any one, but that, on the contrary, you will be rejoiced to find that you can return a verdict that the prisoner was not guilty because he had no participation in the matter. I know it will rejoice your hearts, as it will those of all true American citizens, that McLeod is innocent of the offence.

And here, gentlemen, let me ask you if this evidence which I have described, be true, what will you think of the testimony you have heard? Will it not be found irreconcileable from beginning to end? Must it not then be admitted that these men must either have invented these stories, or been misled by heated imaginations? Our witnesses are not surrounded by darkness—their observation not limited to a single momentary view at the dawn of day, or in the gloom of midnight. They have been in company with the prisoner, and could not be mistaken. Their evidence, then, must be all perjured, or all true. And if all true, then you will not have the slightest difficulty in pronouncing the verdict that justice demands—one which is due to the prisoner, to the nation whose subject he is, and to the American people.

The learned gentleman then concluded, after occupying three-quarters of an hour in his opening; —and as it was now nine o'clock, the Court adjourned until next morning, at the usual hour.

FOURTH DAY—*Thursday*.

On the opening of the Court, Judge Gridley stated that anxious as he was to relieve the Court and Jury of this case, by the conclusion of this week, still the Court felt no disposition to urge the counsel to greater speed than was consistent with the full discharge of their important duties, and wished counsel not to feel pushed by the Court beyond a proper and consistent degree of despatch.

Mr. Hall stated that counsel on both sides were desirous of closing the case this week.

THE TESTIMONY.

Mr. Spencer then called to the stand—

Alexander C. Hamilton—who deposed that he resides at Niagara, U. C., has resided there since the Summer of 1835. I know William W. Reyncock, spoken of by the witness, Wilson; he was deputy collector of the customs at the port of Niagara; I cannot say what was the precise time that Reyncock left Canada, but I know he was not in Canada in the forepart of November, 1837; I went to England in Jan. 1836, and when I returned, in Nov., Reyncock was gone; I had been on habits of particular intimacy with him; he has not been in Canada since, to my knowledge,—don't think he could have been there without my knowing it.

I understood that when he left Canada he went to England; the troubles in Canada broke out in December, 1837.

Cross-examined by Mr. Hall—Mr. McCormick succeeded Reyncock in his office; I don't think Reyncock took any part with the insurgents in Canada; I cannot swear that he was not in Canada after the outbreak, but I do not think he was.

Was you very intimate with Reyncock? I was; I was with him daily; he introduced me to the place where I resided before my marriage, in the same house with himself. If he came to the United States, might he not have done so without your knowing it? Certainly, he might; I have not heard of his being in the United States. Where is Mr. McCormick now? He was at Niagara when I left home. Have you taken any part in the Canadian disturbances? I have. On which part? On the part of the Government. Are you an Officer of, or do you hold a commission under the British Government? I am not, I hold no commission.

Mr. Spencer—Did you ever hear that Reyncock was in England?

Objected to by Mr. Hall, as being too vague to be admitted as evidence contradictory of another witness.

Mr. Spencer—Well, what was the notorious report about him at Niagara? That he had absconded for debt.

The Court—How notorious was this—was it limited to a few persons, or general in community? It was general. What is the population of Niagara? From 750 to 1000 inhabitants.

Hulett Lott, sworn—I am a farmer, and reside in Louisville, Warren county, Pa.; I know the witness, Aaron D. Quimby; I have known him four years; I know his reputation—it is bad; I would not believe him under oath.

Cross-examined by Mr. Hall—I came here from home to be a witness on this trial; I was not subpœned, but came in consequence of a letter from Mr. Spencer, requesting my presence. How came Mr. Spencer to write to you? I wrote to Mr. McLeod. Was you acquainted with Mr. McLeod? I am not; I never saw him before I saw him in Court. Do you know Lewis Boardman, Orasmus L. Munroe, and David Woodin, who reside in the same town with you? I do. What is their character? It is good. You would believe them under oath, would you not? I would, certainly. If they testified to the good character of Mr. Quimby, what would you believe about it? I should believe they were mistaken, and though living near Quimby, did not know him so well as I do.

What did you write to McLeod? I wrote him that Quimby could be impeached, and referred him to the postmaster. I replied, when the application was made to me as a magistrate to take Quimby's deposition, that he was not a man of good character, and could not be relied upon, and the deposition was not taken before me.

Do you defray your own expenses here as a witness? I have, thus far. Have you any expectation of remuneration? I have assurance from Mr. Spencer that my expenses will be paid—nothing more. What is the population of your town? Some ten or twelve families. How far does Quimby reside from you? About four miles. How many of the population of your village have you heard speak of Quimby's bad character? The greater share of them—Mr. Low spoke badly of him, also my brothers, James and Daniel Lott. One man in our village differs from us. What, one entire man in your whole village? Yes, sir—one entire man. Do you and Quimby range on the same side in politics? No, sir—we are politically opposed.

Lansing W. Wetmore sworn—I live in Warren County, Pa.; know the witness, Quimby; have known him three years; have heard his reputation spoken much of for the last six months; the report against him for truth and veracity is uniformly bad; I would not believe a word he said, under oath, unless he was corroborated by other testimony; he has been frequently in courts at home as a witness.

Cross-examined—I live 6 or 7 miles from him; I am a lawyer; I attended the last term of the Common Pleas, and was engaged in the cause in which Quimby was a witness; I was employed on the side of the party to which his testimony was opposed; his testimony was of some importance; no witness was called to impeach him. How came you here? I came at the request of Mr. Spencer, under much the same circumstances as stated by the last witness, Lott; Quimby's own brother speaks hardest of him; he had a lawsuit with his brother; I never knew what Quimby's politics are. Have you expressed, or do you feel any interest as to the events attending the burning of the Caroline? I have felt opposed to the proceedings of the patriots, but I do not think I ever justified the burning of the Caroline. Did you ever express an opinion that McLeod ought not to be tried? I do not know that I ever have. I might have said I thought it a matter which the government ought to settle.

Samuel Drown, re-called by Mr. Spencer.—Did you have a conversation, in February last, with David C. Bates, in which you said you knew nothing about the burning of the Caroline that would do McLeod good or ill? I do not know whether Mr. Bates was present, but when I was subpœned to go to Lockport to testify, I said to my brother-in-law, Mr. Hayward, that if they could not find a bill against McLeod without my testimony, they could not convict him with it. I recollect no conversation with Mr. Bates.

David C. Bates sworn—I live in Canandaigua, and know the witness, Drown. Sometime last winter Drown told me he was subpœned to go to Lockport in the McLeod case. I asked him what he knew about it. He replied that he did not know that he knew enough about it to do McLeod either good or harm.

Cross-examined—I know Drown well; he is a poor man, and it was difficult for him to go to Lockport at that time; I have known Drown ever since he was a boy; I have never heard his character for truth and veracity called in question in a Court of Justice; his reputation I have never heard questioned.

Mr. Spencer. How is his reputation in your community for truth and honesty? For the last three or four years it has been good; before that it was rather bad.

Mr. Hall—As to Mr. Drown's previous bad character, did it reach his truth or veracity? He was reputed dishonest, and a man not to be relied upon.

A Juror—How long has he lived there? Six or eight years; when he went to Canada his character had become good, and remained so after his return from there; I think he had redeemed his reputation two or three years before he went to Canada, and I have heard of no relapse.

David H. Sears, sworn—Resides in Canada—now in the British service as Captain of incorporated militia; was the commander of the guard at Chippewa on the 29th December—it was the inferior picket guard, and extended from the tavern of Davis's to the lower point, off Navy Island; the main guard ended at Davis's; the bridge was between Davis's tavern, and the place of embarkation; from that point sentinels were stationed; the first sentinel near the place where the party embarked on the Chippewa Creek; the place of embarkation was very close to the cut where it entered the Chippewa; there were a considerable number of large trees at the place of embarkation, covering the shore there with their shade.

The next sentinel was at the mouth of the cut, six or eight rods above the cut: the cut was about a hundred yards through, he couldn't exactly say; and the sentinel was half way between the second, and a guard-house built of boards, which stood about a quarter of a mile below the curve point of Navy Island, on the Canada shore of the Niagara River; at the guard-house was the fourth sentinel; the guard-house stood above the road from the river, and another sentinel was on the other side of the guard-house; another sentinel was very close on the bank of the river on the road, about 20 rods above the guard-house; another was about that distance farther on; that was the limit of witness's command; was up all that night, was present when the party embarked.

Col. McNab was not there that I knew of, as it was dark, and I couldn't distinguish any one I did not well know or see nearly; the point of embarkation was just below the mouth of the cut; some of the boats might have been in the mouth of the cut; there were seven boats; was near by them; was mixed up with the party; knew McLeod then; had known him since '34 or '35; knew him very well; saw him very frequently; saw nothing of him in the party. I was directed to tell the sentinels not to challenge boats coming upon the expedition; it was wished to be kept secret, and the challenge might have been heard on Navy Island.

Witness accompanied the expedition as far up as his guard extended—the boats went still higher up, so that witness did not see them—this was about 10 o'clock at night—witness then came back to the guard-house and remained there until he saw a light at Schlosser—now knows that it was the Caroline on fire-then went to where the beacon light was just flaring up, immediately on the cut—remained only a few moments at the beacon light—went immediately to the orderly room within the main guard—then returned to the beacon light—did not remain there very long, but observed the Caroline floating down—remained at the beacon light till the boats returned; about two o'clock in the morning.—Would persons be allowed at that time to walk there without being intercepted? No one could pass without the countersign.

How many boats returned? At first, five nearly together. How long apart in getting in? Four came not far apart—one fell below, and had to row against the current—it was about half an hour behind. Where did they disembark? Where they had embarked. Were you among them when they landed? Yes. For what reason? I had one or two particular friends in the party, and wished to know their fate. Did you find them? I did. Did you notice the party particularly? I did. Did you see McLeod among them? No. Did you see any thing of the other boats? Yes—It was daylight when they came in, I think. You saw them pass the beacon light? It was then nearly extinct. Did they land? They did—but I think I did not see them landing. The other party had gone ashore? Yes.

Were you at Davis's tavern during that night? I was, frequently, and early in the morning. Did you see McLeod there? No; I remember seeing him the day before about noon. Not that morning? No. When did you see him next day? About 11 o'clock. Where? I, and another officer had gone up the river, opposite Navy Island, near the residence of Captain Usher. Did you see McLeod come up there? Whilst standing there we saw them bring up a cannon. Who? The people on Navy Island, and they charged the cannon; and looking down the shore we saw two or three gentlemen on horseback; some said, "that's Colonel McNab," but I said "No, it's Mr. McLeod." I remained there for some hours, when the two gentlemen returned. When was the firing? Just as McLeod and his party came up together. Had there been any firing that day or the day previous? Yes, the day previous. Cannon? Yes; they fired at the people on the Canadian shore! They did! Any killed?

Mr. Hall—I object—I object to such a course.

Mr. Spencer—My learned friend seems a little restive—surely I indulge no feeling of smuggling in evidence. I hold that full evidence relative to the conduct of the occupants of Navy Island is relevant, and I apprehend he will find it difficult to show that that is not competent evidence.

The Court said that it had already been decided that the authority of the Supreme Court must regulate this trial. With respect to this cannonading, it had already been shown, and the hostile character of the occupants of Navy Island was fully gone into, and rendered recurrence to the operations of the Navy Islanders unnecessary and illegitimate.

Mr. Spencer requested his exception to be noticed to the refusal of the Court to receive his offer to show that three of the Canadians were killed by the cannon fired from Navy Island.

Examination of witnesses resumed—Is it safe to cross at Navy Island in winter? Yes—for persons accustomed to do so. Is there ice at Schlosser so as to intercept the passage? No—unless floating ice from Lake Erie. Is it a swift current there? Not so strong as on the Canada shore.

Would a steamboat on that river then be a most powerful auxiliary of the Navy Islanders?

Mr. Hall objected.

The Court overruled the question.

Mr. Spencer requested the Court to note the question.

Cross-examined by Mr. Hall—Where is the place of your nativity? Caldwell's Manor, forty miles from Montreal. Have you resided any where else? In the United States. Where? Rochester. How long? I think I went there in '24, and returned in '28. Were you in the army? Yes. Where enlisted? I was drafted. Where? About 60 miles from Montreal, in the Eastern Township, in 1813. What was your occupation in Rochester? I went to publish an elementary school book. What was it? A pronouncing dictionary. What turned your attention to that? My property was burned, and I was sick, and when convalescent I opened a school and there originated the book.

The Court remarked that it had frequently felt disposed to stop such a course of examination. If they were to have as many autobiographies as witnesses, they would not get through in a year.

Mr. Hall proceeded—Where was the sentinel placed at the point of embarkation?

Witness again described the position of the sentinels as he had on his direct examination. He was also minutely questioned respecting the character of the place where the boats embarked.

[The cross examination of David H. Sears was continued until the recess for dinner, but nothing of importance was elicited, except that on the day after the destruction of the Caroline, at about 11 o'clock in the morning, the witness saw M'Leod on horseback, coming towards Chippewa, from some place down the river.]—*N. Y. Com. Adv.*

THE NATIONAL QUESTION.

Mr. Spencer here proposed to give in the documentary evidence—consisting of the correspondence, &c. between the American and British Governments in relation to this subject.

The purpose for which this evidence is offered—

1. Having established the fact that the expedition was conducted by order of the British Colonial Government, no actor in the expedition is responsible individually.

2. That a state of war actually existed between the insurgents on Navy Island and the Colonial Government in Canada.

3. That the destruction of the Caroline was necessary as an act of self-defence. She was engaged in furnishing munitions of war, and material for assault and defence; and there being no armed vessels or steamboats at Chippewa, and as no small boats could interfere with the steamboat in the day time, was it not strictly proper in this state of things for the Provincial Government to make the attack upon her in the night time? Were the Canadas to lie by and see these operations, without making all necessary efforts to destroy her? What then must they do? Must they submit to this annoyance? Had they not a right in self-defence to work the destruction of this boat? Were they to wait until these forces on the Island had made a descent upon Canada, and raised the standard of revolt? A revolt had been attempted at Toronto and put down, and preparations were making for another.

Had they not a right in defending themselves to destroy an instrument used for the purposes of attack and annoyance? Suppose the insurgents had made their place of rendezvous on Grand Island, and there cut down the timber for the purpose of forming a flotilla—might they not attack and destroy this timber to be used for the purposes of attack on Canada?

This is to be decided by the laws of this country. Let us refer to a case. In the administration of President Monroe, a peace-loving magistrate as we ever had, a Spanish Island near Florida was used as a rendezvous for men who were there collecting slaves, and were also intending to defraud the revenue. President Monroe dispossessed the men at Amelia Island for no other reason than that the Spanish Government was too weak itself to defend the Island. The reasons put forth were that the introduction of slaves might be prevented, and the frauds on the revenue prevented. The United States had not declared war against Spain.

We have another case more recent. When Gen. Jackson had command of the Southern army, after the late war, he had special orders not to enter the Spanish territories in Florida. But the Seminole Indians not being kept in subjection by the Spanish authorities, he entered Florida, took her forts, killed her men and executed Arbuthnot and Ambrister. Was this murder, and was he personally liable for this? The attack on the Caroline was made in order to destroy the means used by the assailants in their attack upon the Canadas. The question is not whether the British Government is right or not. If in the wrong, our Government can and will see that this matter is put right.

Suppose the Colonial Government had taken possession of Grand Island, and fortified it, but no war declared, would it not be right for the American Government to drive the hostile party from the island, and if a regiment was sent there to dislodge them, could they be taken and tried as murderers? No person who had acted under orders from his Government can be held responsible individually.

But there is still another view of this matter.—It is already taken cognizance of by the Government of the United States, in all its forms; and they having the jurisdiction of this matter, that jurisdiction is exclusive. It is the duty of the Executive Department to decide, and having decided, that is conclusive. It is now in a course of negotiation. And have they not a right to demand of the British Government satisfaction for the murder of Durfee as well as the infraction of our territory.

What was the case of the Leopard and Chesapeake? The commander of the Leopard in time of peace took from the Chesapeake men whom he claimed, and men were killed, but was the captain of the Leopard treated as a murderer? No. The British Government made reparation for the outrage—as the treaties will show. The Government having cognizance of this matter, and having taken it, there is an end of this matter, and the prisoner is entitled to a verdict of acquittal.

But as to the question of the Supreme Court.—What does it decide? Every part of it, except the first proposition in it, is *obiter*, and does not rise to the dignity of authority. Upon habeas corpus they cannot look behind the indictment; that is the first proposition. But suppose they had come to an opposite conclusion—still this decision, as to the result, would have been the same, because you could not look behind the indictment, and the prisoner would have been obliged to make good his defence on the indictment.

The case then calls upon your Honor as a judge and lawyer to decide under the law of nations whether this movement, since recognized by the British Government, does not exempt the individuals from any responsibility individually.

The Attorney General rose to reply, but was stopped by Judge Gridley. His honor said,

The indictment was carried to the Supreme Court, and the court considered all the questions raised, and decided—

1. That they had no right to look behind the indictment, and—

2. On the merits, that there was no war existing, which took away the right of the state to entertain action in this matter.

It was the unanimous opinion of the Supreme Court, and I must be governed by it.

The facts are briefly these. A band of men were assembled to make an attack upon the Canadas, and the colonial government had a right to take all necessary measures to suppress and repel the attack. And every subject of this country had a right to expatriate himself and join them, but thereby subject himself to all the consequences.

If this boat was a part of the armament on Navy Island, and if seized there, she might be destroyed. But when she was on our shores, no right existed for them to attack her there, for fear she might be used to annoy them. They had no more right to do this than to make an attack on Buffalo because arms had been taken from there and used by the assailants.

I am administering the laws as I find them given by the Supreme Court, and I feel bound to reject the evidence.

Mr. Spencer took exception.

Mr. Spencer then proposed to read the evidence taken by commission in Canada; the Attorney General interposed objections, observing that this was the only state which allowed evidence in criminal cases, and that it was not allowed even in England; he complained of the manner in which some of the depositions had been taken; after much discussion the reading was allowed, commencing with that of Sir Allan N. McNab; objections were taken to some parts of almost every answer.

The documents cover a great deal of space.—We give the following synopsis of their contents:

Col. McNab's testimony states that he knew a body of militia was assembled at Chippewa, in December, 1837. They were ordered out by Sir Francis Head, to repel an expected invasion from rebels and American brigands assembled on Navy Island and on the American shore near Schlosser. He had received information which led him to believe that the Caroline came for the express purpose of assisting the rebels and brigands on Navy Island. That he sent officers to watch the boat, who saw her land a cannon and several men armed, and that upon this he determined to destroy her that night. That Capt. Drew was in command of the expedition, with orders to take and destroy her, wherever she was found. Has known McLeod five or six years. Did not see *him* when the boats shoved off. Nor when they returned. Made a return of the officers and men engaged. Is sure that Alexander McLeod was not among them.—Was not in command when Navy Island was taken possession of.

Mr. Spencer then introduced and read the deposition of John Harris, Esq. some portions of which also met with opposition, many of the objectionable interrogatories and replies contained in the McNab affidavit being also embraced in this.—The admitted testimony of Harris was substantially that Alexander McLeod was not in any of the boats, nor was there any in the boats of that name; that he is positive, as he was employed as an aid-de-camp to Capt. Drew in superintending the manning of the boats.

The next deposition introduced and read was that of Edward Zealand, who testified in substance that McLeod was not in the boat in which he was, and that he did not see him during the engagement, or among the party that landed after the return of the boats.

The Court then adjourned till Friday morning, when the depositions of William S. Light, Esq. (Captain in the 2d Regiment of Oxford Militia); Hamilton R. O'Riley, Esq., Barrister at Law; Thomas Hector, Esq. of Toronto; Christopher Beer, (a naval officer, and now attached to H. B. M. Steamer Minos, on Lake Erie); F. Clevely, Esq. (acting clerk of Capt. Drew); J. Palmer Battersby, Esq. of Ancaster; and Robert Armour, Esq. Attorney at Law, were read. They all took part in the expedition against the Caroline. Most of them were in different boats. Their evidence, which was substantially to the same effect as that of Zealand, stated that they did not see McLeod during the attack, and that no one was killed on board the Caroline, but one severely wounded, who was taken ashore.—[Supposed to be Captain King, brother-in-law to Mr. Wells, the owner of the Caroline].—The deposition of Stephen McCormick, Lieutenant in the Royal Navy, (and second in command of the expedition) was also read. He states that he did not see McLeod during the night of the burning, but he saw him shortly after the destruction of the Caroline, and *he expressed his regret that he had not heard of it, as he would have accompanied them.* He does not believe there was a living creature on board the Caroline when she was cast off.

Angus M'Leod, of Kingston, brother of Alexander M'Leod, saw his brother on the evening of the destruction of the Caroline, on his way to Stamford, distant about four miles on horseback; he was not in witness's presence from that time until next morning; saw the men land from the boats on their return; did not see his brother among them, nor does he believe he was of the party. His brother had been round Navy Island early the preceding morning, in a boat, with a reconnoitering party.

Colonel *John Chisholm*, of the 7th Gore Regiment, knows Alex. M'Leod; was at Chippewa when the Caroline was destroyed; was standing on the beach when the men stepped into the boats; he did not recognize all of them, but knows M'Leod was not of the number; followed the boats up the stream, and conversed with some who were in them. Witness was then acting Quarter Master General at Chippewa. The horses of all the bearers of despatches were fed at his stables; saw M'Leod's horse taken out of the stables before sunset, and at the same time saw M'Leod in the square, and thinks he left with despatches.

At the conclusion of the reading of these depositions the court adjourned to two o'clock, leaving five depositions yet unheard.

Correspondence of the N. Y. Express.

UTICA, Oct. 8th—*Friday morning.*—The Court continued in session until between nine and ten o'clock, last evening, and met again at a quarter of eight this morning. The only progress made was in the reading of three depositions out of a large number in the possession of Court and Counsel, which will be read. The Attorney General continued his objections both to the manner in which the testimony was taken, and to the testimony itself,—preceding such deposition with stated objections, and interfering to prevent both answers and interrogatories. All material points, however, were read; and already, the testimony, if it shall be relied upon by the Court and Jury, is sufficient to prove an *alibi* on the part of the prisoner.—The positive testimony to come, will confirm the depositions read and to be read.

The Grogan case, at which our friends in Vermont so promptly rose in arms, has been ended by the release of the prisoner, and his safe conduct to the lines by the provincial authorities. This prompt answer to the notification of the mode of his arrest, made by the American authorities, is highly satis-