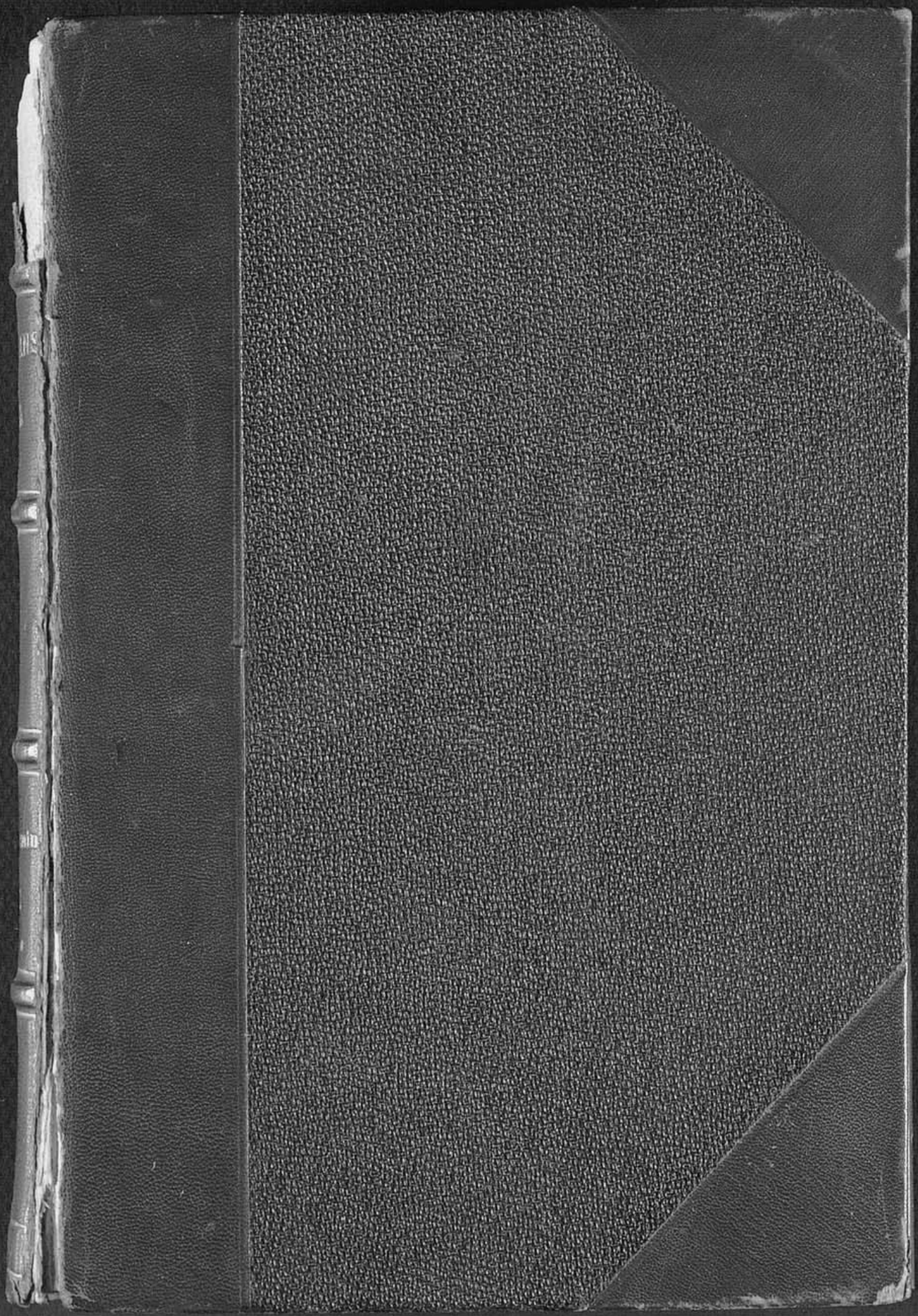

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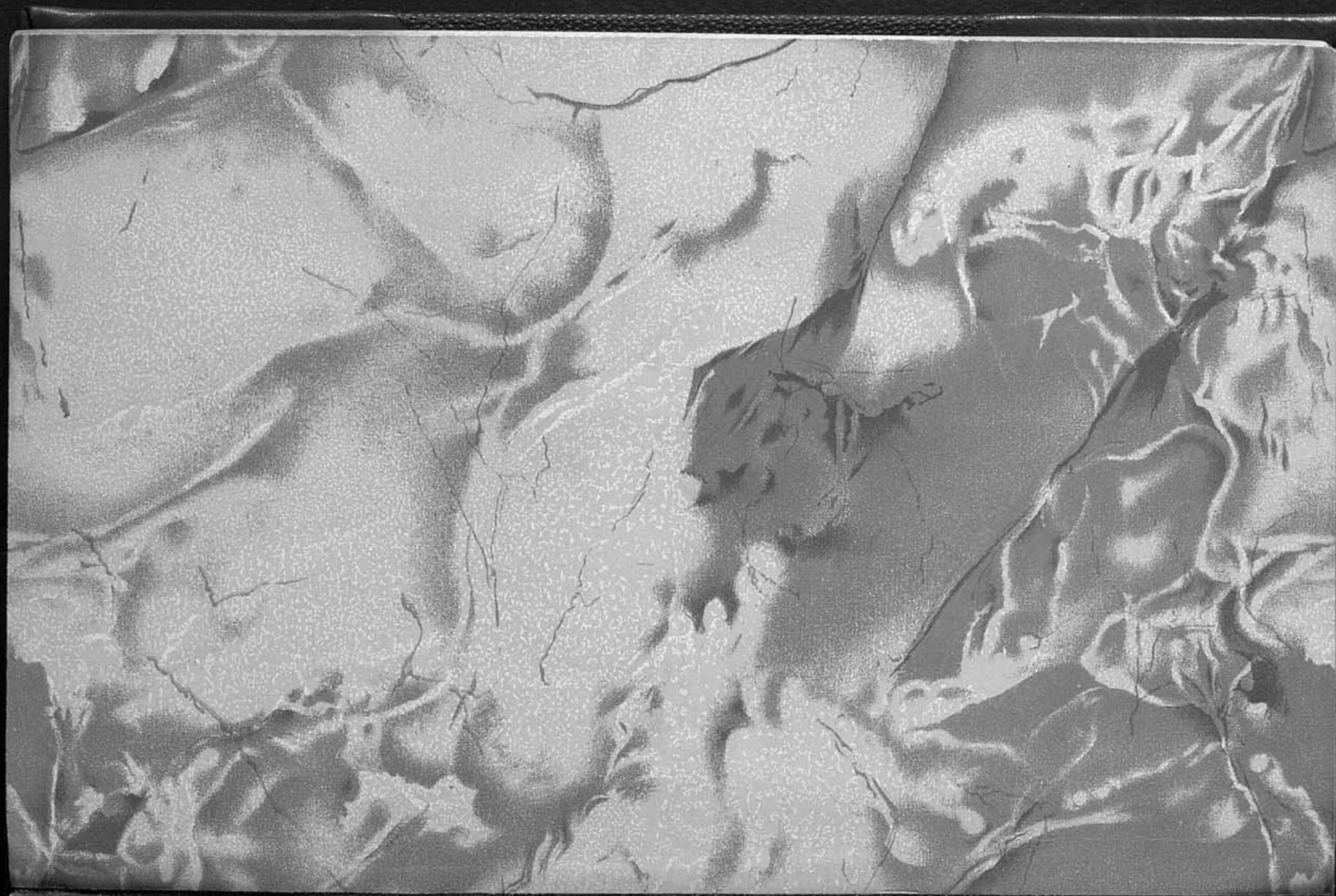

THE

ST. ALBANS RAID;

OR,

INVESTIGATION INTO THE CHARGES

AGAINST

LIEUT. BENNETT H. YOUNG AND COMMAND,

FOR THEIR ACTS AT ST. ALBANS, VT.,

ON THE 19TH OCTOBER, 1864.

BEING A COMPLETE AND AUTHENTIC REPORT OF ALL THE PROCEEDINGS ON THE DEMAND OF THE UNITED STATES FOR THEIR EXTRADITION, UNDER THE ASHBURTON TREATY.

BEFORE

JUDGE COURSOL, J.S.P.,

AND THE

HON. MR. JUSTICE SMITH, J.S.C.

WITH THE ARGUMENTS OF COUNSEL AND THE OPINIONS OF THE JUDGES REVISED BY THEMSELVES.

COMPILED BY

L. N. BENJAMIN, B.C.L.

Montreal:
PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET.
1865.

PREFACE.

THE magnitude of the interests involved in the St. Albans Case, and the importance of the questions which arose during its discussion, have appeared to me such as to justify the publication of a complete report of the proceedings; and in preparing it accordingly, I have been indebted to the eminent Counsel engaged on both sides for such a revision of the reports of their arguments, as enables me to be certain of their substantial correctness.

Before going to press, documents arrived from England which appeared to sustain the correctness of two of the most important of the judgments rendered in the case. I have, therefore, added them as an appendix.

L. N. B.

MONTREAL, 17th April, 1865.

ERRATUM.

Page 1, line 8, instead of "with felony," read "with suspicion of felony."

ST. ALBAN'S RAID.

Before Mr. JUSTICE BADGLEY.

Mr. Kerr applied for a writ of *habeas corpus* to bring before his Honor, William H. Hutchinson, alleged to be then in gaol upon the following commitment :—

PROVINCE OF CANADA, *District of Montreal.* } POLICE OFFICE.

To the keeper of the Common Gaol of the said District, greeting :

[L.S.] Whereas W. H. Hutchinson of the Parish of Montreal, in the said District, laborer, stands charged upon oath with felony. These are therefore to authorize and command you to receive into your custody the body of the said W. H. Hutchinson, and him safely keep for examination.

Given under my hand and seal at Montreal, this twenty-seventh day of October, one thousand eight hundred and sixty-four, in the twenty-eighth year of Her Majesty's reign.

(Signed) J. P. SEXTON,
Recorder.

And also for a writ of *certiorari* to bring up the information upon which the commitment issued, which was sworn to be of the following purport :

PROVINCE OF CANADA, *District of Montreal, City of Montreal.* } POLICE OFFICE.

The information and complaint of Guillaume Lamothe, of the city of Montreal, in the District of Montreal, Esquire, chief of police, taken upon oath, this twenty-seventh day of October, one thousand eight hundred and sixty-four, at the Police Office, in the city of Montreal, before the undersigned Recorder in and for the city of Montreal, who saith : Upon the twenty-fourth day of October instant, at the said city of Montreal, between the hours of six and eight of the clock in the afternoon, I arrested a person, who has since given his name as W. H. Hutchinson, upon suspicion of his having committed a felony at St. Albans, in the State of Vermont, one of the United States of America. Upon the person of the said Hutchin-

son, who is now a prisoner in my custody, I found after his said arrest ten thousand dollars of the Franklin County bank bills, said bank being situate in St. Albans, in the State of Vermont, one of the United States of America, and two loaded revolvers. And I have reason to believe that the said sum of ten thousand dollars was feloniously stolen by the said Hutchinson, or by others with whom he was acting in concert.

Wherefore I pray for justice, and have signed

GUILLAUME LAMOTHE,
Chief of Police.

Sworn before me, at Montreal, this 27th October, 1864.

J. P. SEXTON, Recorder.

Mr. Kerr opened two principal grounds of objection to the commitment.

1. That it contained no charge of any offence for which the prisoner could be committed; "suspicion of felony" not being such a charge.

2. That the warrant of commitment contained no limit as to the time during which the prisoner was to remain in confinement: though the time for which he could be remanded was expressly limited by the statute; and though the text writers laid it down as a rule that the warrant should declare the limit; and though the form contained in the schedule to the statute, and the forms given in the books were all so framed as to limit the time.

Mr. Abbott, Q. C., followed on the same side.

The fact that the information contained no statement that warranted a suspicion of felony under the law of Canada, was also insisted on.

Mr. Johnson, Q. C., on behalf of the Crown, opposed the application, on the ground that the warrant was sufficient, and that the information disclosed a sufficient ground for the imprisonment, and further on the ground that being remanded for examination only the proceedings against the prisoner should not be interfered with.

Mr. Devlin, on behalf of the U. S. authorities, followed on the same side.

His Honor took time to consider; and at 2 P. M. the same day, rendered the following judgment:—

The warrant of commitment charges the prisoner with *suspicion of felony*, and orders his commitment *for examination*. Objections are made to both the generality of the charge and the unlimited remand. Now it is not necessary that the offence should be described with the nicety and technical precision of an indictment, but the prisoner should be charged with some legally defined and well known

offence for which he would be subjected to criminal proceedings either by indictment or otherwise, and that specific offence cannot be included under a general term which compendiously covers a great variety of criminal offences. The term felony includes a number of crimes ranging between treason and larceny; and hence it is not sufficient simply to designate the offence by the name of the class of offences to which the magistrate may find or judge it to belong; and it is undoubtedly the received opinion that a commitment for felony in general without showing the species is not good. The reason given for requiring certainty is plain enough, to enable the judge applied to for the *habeas corpus*, which is in the nature of a writ of error, to determine whether the commitment is erroneous or not, otherwise the power of Courts and Judges under the law would be seriously abridged. A commitment, therefore, in the absence of any statutory provisions prescribing its forms and contents does not sufficiently state the offence by simply designating it by the class of crimes to which the committing magistrate may consider it to belong; it should state the facts charged to constitute the offence with sufficient particularity to enable the Court or Judge on *Habeas Corpus*, to determine what particular crime is charged against the prisoner: if commitment fail to do this, the prisoner ought to be discharged from it: this is the law and the decision is explained and enforced by Mr. Hurd an American jurist, who has treated, *ex professo*, the subject of the writ of *habeas corpus*. Surely if the speciality of the offence is so strongly required in commitments for actual offences, how much more necessary and essential is it for offences merely suspected, as in this case, *suspicion of felony*. The charge itself is strangely incomplete and untechnical, being not alone general in its expression, but without any fact to show its application in any manner to the prisoner; in this respect the commitment is clearly erroneous.

The second objection has reference to the generality of the order of detention; the prisoner is remanded *for examination*, but without stating when or where. It is true that the magistrate may remand for examination from time to time, at his discretion, but that discretion is not unlimited, it is a legal discretion for the time and times provided for by the statute: that time, therefore should have been stated. The justice, as stated in the books, should not fail to state in his warrant of remand the time and place at which the prisoner is again to be brought up, and our Provincial Statute plainly enough provides for this and assists the magistrate with a form in this particular, leaving blanks for time and place, which the magistrate shall fill up. It is useless to say more upon this palpable error.

These two objections are formal against the face of the commit-

ment, and, to my mind, render it bad and defective. I have considered this commitment simply as any other, issued in the course of ordinary proceedings before our magistrates, upon commitments for local offences, cognizable by provincial magistrates under the provisions of our local laws, and should not have advanced beyond the commitment itself but for the urgency of the counsel against the prisoner in directing my attention to the information, with the view of supplementing the formal defects of the commitment by the other merits of the information. This latter document informs the magistrate that the informant, the police officer, had arrested the prisoner on suspicion of having committed a felony at St. Albans, in the State of Vermont, one of the U. S. of America, &c. This document is exceedingly loose and defective, and does not justify the charge set out in the commitment, which in this case did not issue *e mero motu* of the magistrate, but upon this information. Now the law clearly requires that the commitment shall state some good cause certain, showing substantially a criminal matter over which the committing magistrate has jurisdiction, and for which the former may be legally committed, and that criminal matter must be stated with certainty to distinguish it from other offences. None of this can be extracted from the information. Viewed as information of a crime committed in this Province, it wants every legal ingredient to give it effect; taken as the information of a crime committed in the United States, it is plainly one for which the committing magistrate could have no jurisdiction, being done in a foreign country, and, moreover, not in the category of offences for which extradition is allowed under the treaty.

It has been urged that the allowance of the *habeas corpus* will interfere with the course of justice. The writ, however, cannot be promoted or impeded on that account, if there is no legal commitment to detain the prisoner, as in this case. Even in the course of the examination of a prisoner before a magistrate, where there is a special charge *en regle*, it is quite competent for a magistrate to admit the prisoner to bail *in the meantime;* and this does not prevent the continuance of the examination, which would go on, although the prisoner is at large under his bail bonds; or the magistrate may even prevent him to go at large without bail, and still the examination would not be interfered with. Now, this statute allowing the remand, does not certainly interfere with the allowance of the *habeas corpus*, and as certainly, upon a defective commitment like the present, the allowance of the writ cannot be legally refused.

Writ granted returnable *instanter*.

The following is the gaolor's return to the writ of *habeas corpus:*

PROVINCE OF CANADA, }
District of Montreal. }

I, Louis Payette, keeper of Her Majesty's Common Gaol, in the city and District of Montreal, in the Province of Canada aforesaid, do hereby certify and return to our Sovereign Lady the Queen that before the coming of the annexed writ to me directed, to wit, on the 27th and 29th days of October, one thousand eight hundred and sixty-four, the body of William H. Hutchinson therein named, was committed into the said Gaol of our said Lady the Queen, under my custody, by virtue of two warrants under the hand and seal of J. P. Sexton, Recorder of the city of Montreal, and Charles J. Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, which said warrants are in the words following, to wit:

PROVINCE OF CANADA, }
District of Montreal. } POLICE OFFICE.

To the keeper of the Common Gaol of the said District, greeting: Whereas William H. Hutchinson, of the parish of [L.S.] Montreal, in the said District, laborer, stands charged upon oath with suspicion of felony: These are, therefore, to authorize and command you to receive into your custody the body of the said William H. Hutchinson and him safely keep for examination.

Given under my hand and seal at Montreal, this twenty-seventh day of October, one thousand eight hundred and sixty-four, in the twenty-eighth year of Her Majesty's reign.

(Signed) J. P. SEXTON,
Recorder.

PROVINCE OF CANADA, }
District of Montreal. } POLICE OFFICE.

To all or any of the Constables or other peace officers in the said District of Montreal, and to the keeper of the Common [L.S.] Gaol of the said city of Montreal, in the said District of Montreal, greeting: Whereas William H. Hutchinson, late of the town of St. Albans, in the State of Vermont, one of the United States of America, laborer, now in the city of Montreal, was this day charged before me, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace, in and for the city of Montreal, on oath of Marcus Wells Beardsley and others, for that he the said William H. Hutchinson on the nineteenth day of October instant, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with a certain offensive weapon and instrument, to wit, a pistol, commonly called a revolver, loaded with powder and balls, and capped, in and upon one Marcus Wells Beardsley feloniously did make an assault, and

him, the said Marcus Wells Beardsley, in bodily fear and danger of his life, then and there did put, and a certain sum of money, to wit, to the amount of seventy-six thousand dollars current money of the said United States of America, and of the value of seventy-six thousand dollars, current money aforesaid, of the moneys and property of the Franklin County bank, at St. Albans aforesaid, a body corporate, constituted and recognized by the laws of the said State of Vermont, from the person, custody and possession and against the will of the said Marcus Wells Beardsley, and in his presence then and there feloniously and violently did steal, take and carry away, against the form of the statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of said State. These are therefore, to command you the said Constable or Peace Officers or any of you, to take the said William H. Hutchinson and him safely convey to the Common Gaol at the city of Montreal aforesaid, and there deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said Common Gaol to receive the said William H. Hutchinson into your custody in the said Common Gaol, and there safely to keep him until he shall be brought before me for the purpose of an examination upon oath of any person or persons touching the truth of the said charge, in conformity with the provision of the Statutes made to give effect to the Treaty between Her Majesty the Queen and the United States of America, for the apprehension and surrender of certain offenders, on the second day of November next.

Given under my hand and seal, this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and sixty-four, at the said city of Montreal, in the District aforesaid.

(Signed) CHAS. J. COURSOL, J. S. P.

And that this is the cause and the only cause of the capture, commitment and detention of the said William H. Hutchinson in Her Majesty's Gaol aforesaid, the body of which said William H. Hutchinson I have here now as by writ it is commanded me.

Attested at the city of Montreal, in the said District of Montreal, in the said Province of Canada, this twenty-ninth day of October, in the twenty-eighth year of Her Majesty's reign, and in the year of Our Lord one thousand eight hundred and sixty-four.

(Signed) LOUIS PAYETTE, Gaoler.

By this return it appears that a subseqent warrant of commitment had been made out—and time till the following morning was granted to take communication of it. On the following day, before JUDGE BADGLEY, in Chambers,

Hon. Mr. Abbott, Q. C., on behalf of — Hutchinson, stated that the return which now appeared before the Judge contained not only the original commitment of the Recorder, but also a subsequent one; that the argument respecting the Recorder's commitment having disclosed the defects,—the second was prepared with the view of supplementing the first. The commitment of the Recorder was rendered inadequate by the omission to state the day, the place and the time when the prisoner should be brought up for examination. The attempt to cure the defect in the other warrant consisted in placing at the end of the description of the statute in the warrant the words "on the second day of November next," making the commitment read to the effect that the jailer was ordered to return the prisoner for examination on that day according to the terms of the statute passed for such and such purposes, on the second of November. As the return set forth the second commitment, it was necessary to show now—and he was ready to do so, that it was insufficient. The course of proceedings adopted in the subterranean regions of the police office, was very extraordinary, for as fast as one commitment was found fault with and was on the point of being quashed by his Honor the Judge, another was submitted in order that the accused might be kept in jail from day to day, till the learned gentlemen who drew up the first commitment should learn from the prisoner's counsel how to prepare one in a legal and valid manner. As long as the clerk of the crown, acting apparently in the capacity of clerk of the magistrate, continued to furnish affidavits and commitments, he should be careful how he managed the business, and not illegally infringe the liberty of individuals. The Judge, however, would doubtless take good care that personal freedom should not suffer from any contravention or overstraining of the law.

Mr. Carter objected to being styled clerk of the magistrate. He was not such, and had never acted in that capacity.

Hon. Mr. Abbott observed that all he could say was this, that when he arrived at St. Johns, as counsel for the prisoners, he found the learned gentleman who was clerk of the crown for the District of Montreal, drawing up informations, preparing commitments, and acting in the capacity of magistrate's clerk in the District of Iberville. These were the duties of a magistrate's clerk, not those of clerk of the crown for the District of Montreal.

Mr. Carter said that if the learned counsel wanted to know in what capacity he acted, he would tell that gentleman. He would tell him that he received a telegram from Hon. Mr. Cartier, desiring him to go to St. Johns to assist Judge Coursol in carrying on this investigation.

Hon. Mr. Abbott said that whether the learned gentleman had

acted at the instance of the attorney-general or no, the task he was called upon to perform was precisely that of clerk to the magistrate. As to his being sent there by the attorney-general, he was surprised to hear it; for it was the first time in the history of constitutional government that a free government had been found assisting foreigners in attempting to effect the extradition of persons found within its lines, those persons intending no injury to the country in which they had taken refuge, and observing the laws of the country under whose protection they had placed themselves; and it was a very strange mode of action on the part of the government to send salaried officials away from the duties of their offices, for any such purpose.—The learned counsel then went into the merits of the case, and assuming that the commitment made out by Mr. Sexton was quashed, shewed that the statute authorizing extradition clearly pointed out the course to be pursued. A magistrate was bound, on information being laid before him, to issue his warrant for the arrest of the party accused, and have him brought up for examination. The magistrate then had a right to examine into the facts, and hear the evidence, which, if satisfactory, would authorize him to send the accused to jail, to be dealt with according to the terms of the statute, and to be given up on the issue of the governor-general's warrant. But this particular warrant did not show that the prisoner had ever been brought before a magistrate; it was simply a warrant sending him to jail, instead of having him brought before the proper authority to be dealt with according to law. In this case the terms of the statute had not been followed; the magistrate had exceeded his jurisdiction, and his proceedings were absolutely null. The learned counsel then went on to show that supposing the magistrate had power to remand the prisoner for examination, he was bound in the commitment remanding him, to order the jailor to bring him back for such examination, at such time as in his discretion he considered best, but within the limit fixed by the statute. But in the matter of this particular warrant, instead of fixing the time in that part of the warrant which related to the jailer, nothing at all was said about time; but the jailer was merely ordered to keep the accused in prison for examination, when he should have been directed to bring him up at a time and place that should have been mentioned in the commitment. No such mention of time and place being made, and the attempt to fix a time was so clumsily made, that the literal and grammatical meaning of the words in the warrant, "the 2nd day of November," actually conveyed the idea that the statute was made and come into force only on that day. The warrant was illegal, and the commitment of the prisoner was the same; and these few words, "the 2nd day of November," were interpolated at the end of the warrant to give

it a validity it did not possess. Supposing the interpolation to mean that the examination was to take place on the 2nd day of November, there was no order to the jailer to bring him up on that day; he was ordered simply to hold the accused in custody. The learned gentleman then referred to the authorities cited on Saturday in reference to Mr. Sexton's commitment, showing the necessity of stating in the warrant the time and place when the prisoner should be brought up for examination.

After some discussion,

His Honor said the first question was the irregularity of the whole proceeding. If the gentlemen opposed to Mr. Abbott had waited till they saw if the prisoner were discharged on the first warrant, then they might have arrested him on the 2nd, and the question of *habeas corpus* would have been unembarrassed. Had those gentlemen taken this step, the whole thing would have been more satisfactory. The jailor, probably could not help having the second commitment in his possession, but the whole proceeding was very irregular.

After some further argument,

Mr. Johnson, Q. C., said he desired to have time to argue the validity of the second commitment. If this right were conceded, he was prepared to go on at once.

Consent having been accorded to Mr. Johnson, the parties were heard on the validity of the commitment.

Mr. Carter came forward and desired to be heard on behalf of the police magistrate.

Hon. Mr. Abbott objected on the ground that the question of the validity of the commitment was a matter for the Judge alone.

Mr. Carter renewed his application to be heard.

Hon. Mr. Abbott said that the magistrate could not be represented by counsel. Further the statute laid it down that a clerk of the crown was prevented from acting as advocate, counsel, solicitor or proctor, in any case whatever.

His Honor said that if Mr. Carter came here to represent the Judge of the peace, he could not be heard.

Mr. Carter said he had a right to be heard.

The Judge of the peace came forward and said he had no desire to have counsel appear on his behalf; for if any thing had to be said respecting the return he could say it himself.

Mr. Devlin said he was not prepared to discuss the validity of the second commitment, as he had not had sufficient notice.

Hon. Mr. Abbott replied that Mr. Devlin was present on Saturday, when he asked till Monday morning to consider the matter; his request was granted. He had had ample time.

JUDGE BADGLEY intimated he would complete the hearing of the case at two o'clock.

At two o'clock before His Honor JUDGE BADGLEY,

Mr. Kerr, on behalf of the prisoner, said that the whole question was, whether the commitment set out in the return of the jailer was a valid one or not. This was the only question on which His Honor had to pronounce.

Mr. Devlin said he was not prepared to argue the validity of the warrant or commitment to-day, and as far as was in his power he would protest against this mode of dealing with a question of this importance. Before the second warrant could be taken up the prisoner's counsel must come before His Honor with a second petition for a writ of *habeas corpus*.

Mr. Johnson, on behalf of the Crown, said he did not see why the Judge should grant an order for a discharge, when there was no petition.

His Honor observed that it was plain enough the *habeas corpus* and not the petition constituted the record. The application made by Mr. Devlin, in the interest of various parties, to have time to argue the second commitment involved was deserving of consideration, for the questions which might arise upon it a very large branch of what might be called international law. This was a matter of very great importance, and he would suggest to the counsel on all sides, for the purpose of avoiding further discussion, that the second commitment should not now be taken up. The whole proceeding had been very irregular. The man might have been discharged on the first warrant, and before he left the room been arrested on the second, but instead of this both warrants had been mixed up in a very irregular manner. The zeal of the prosecutors had outrun their discretion, and the whole thing was a complete series of blunders from first to last, and this evidently to make confusion. It would have been better in order to simplify the thing if the first warrant had been disposed of, and the second commitment could then have come up substantially, and the questions involved been fairly discussed. He would suggest to the gentlemen on both sides to let judgment go on the first warrant, reserving their right to take substantial issue on the second.

Hon. Mr. Abbott observed that to-morrow was a holiday, and the prisoner would be kept two days in jail, during which time any number of applications might be made against him. The object of prisoner's counsel was to have him released from illegal detention.

Judge Badgley—The whole thing that comes up now is the sufficiency or insufficiency of the return; and the question comes up on formal or technical grounds. The Judge only has to look on the face of the warrant to see that it bears out a sufficient commitment. I think it does bear out a sufficient commitment to enable the Court to remand the prisoner for the present. That return is sufficient.

After some further discussion the warrant issued by the Recorder was pronounced by the Court to be illegal, null and void; and Friday was appointed for hearing the application for the discharge of the prisoner, from the warrant issued by the Judge of the sessions of the peace. The prisoner remains in jail in the meantime.

COURT OF QUEEN'S BENCH, *In Chambers.*

Motion of Writ of "Habeas Corpus."

(Before Justices AYLWIN, MONDELET and DRUMMOND.)

WEDNESDAY, Nov. 2nd, 1864.

This morning the Court was crowded, to hear the argument and decision on motions for a writ of *habeas corpus* in behalf of the St. Albans raiders, at present imprisoned in the Montreal jail.

Hon. Mr. Abbott, Q. C.; Mr. Laflamme, Q. C.; and Mr. Kerr appeared for the prisoners. Mr. Develin, representing the United States Government, associated with Hon. Mr. Edmonds, of Vermont. Messrs. Johnson, Q. C., and Carter, Q. C., appeared for the Crown. Messrs. E A. Sowles and Edson were present in the interest of the St. Albans banks robbed.

Mr. Kerr presented a petition for a writ of *habeas corpus* in behalf of Samuel Eugene Lackey and thirteen other prisoners concerned in the St. Albans raid.

Mr. Justice Mondelet.—Are all charged with the same offences?

Mr. Kerr.—Yes.

Judge Mondelet.—With specific offences?

Mr. Kerr—One offence is murder committed within the jurisdiction of the United States, and the other robbery. The principles which would apply to those commitments are general and applicable to the whole.

Mr. Carter said he was clerk of the crown, and had a right to speak on the present occasion. He would beg to inform the Court that this was not a final commitment, but one for examination, and that the prisoners were now before the Judge of the sessions, who was about going on with the examination of witnesses and other requisite procedings. The argument for a writ of *habeas corpus* was actually delaying the argument about to take place before the Judge of the sessions.

Judge Aylwin—Asked for the petition, which was handed to and read by him. He then asked, was there any final commitment?

Mr. Kerr.—None.

Judge Aylwin.—That is the end of the matter.

Mr. Kerr asked to be heard.

Judges Aylwin and *Drummond*, though demurring to the propriety of such a course, before the prisoners were examined, permitted the Counsel for the latter to proceed.

Mr. Abbott said the point they intended to bring before their Honors was not one relative to the crimes charged, but applied to an excessive jurisdiction in this commitment. If the magistrate exercised excessive jurisdiction, even in a preliminary commitment, the Court would take notice of it. The statute authorizes a magistrate, under certain circumstances, to commit a prisoner for examination, for a limited period, in his discretion, not exceeding eight days. Of course, then, if a magistrate committed a prisoner, without reference to the statute, without limiting the time before examination, there was an exercise of excessive jurisdiction.

Judge Mondelet asked if the learned gentleman had ever read or heard of a writ of *habeas corpus* being applied for while a preliminary investigation was proceeding before the magistrate or any justice whatever, in order to prevent such examination being completed. Suppose the prisoners were discharged at this stage, what security would there be for the community at large. He did not allude to these prisoners in particular, as their case must come before the Court. The Judges were independent of the executive and every one else, and justice could and would be done the prisoners whatever the consequences. But, at the same time, the Court must take care and act according to the law, both as to the prisoners and foreigners interested.

Mr. Abbott said that the law had contemplated every case, including that of a person brought before a magistrate against whom there was not sufficient evidence at the moment to warrant a commitment for trial. The defence addmitted that if the prisoners in this case were properly committed for examination, they could not interfere. The mode in which the law had provided for that examination was this: (Cap. 102, sec. 42, Con. Stat. Canada,) " If from the absence of the witnesses, or from any other reasonable cause, it becomes necessary, or advisable to defer the examination, or further examination of witnesses for any time, the justice or justices before whom the accused appears, or has been brought up upon his or their warrant, may, from time to time, remand the party accused, for such time as by such justice or justices, in their discretion, may be deemed reasonable, not exceeding eight days at any one time, to the common jail or house of correction," etc. If the power was not conferred by this clause, it was conferred by no clause at all, so the law very wisely gives to one justice the right of remanding prisoners for a specified period, but not to keep them there for ever. The imprisonment was not to exceed eight days at any one time. These prisoners were committed for examination several

days ago, and had not yet been brought up for examination. They may be confined in this jail for the next twenty years, under the present warrant. The magistrate had not exercised his discretion as to the time these prisoners might bekept in jail. Instead of saying to the jailer, " You shall detain them for eight days, and then bring them up," they were committed for an indefinite period. They might have been brought up in the interval that had elapsed since their commitment, but he had no right to commit them for a longer period than eight days.

Judge Aylwin.—The commitment bears date the 27th of October.

Judge Drummond.—The eight days have not expired. The magistrate remanded from day to day in general, but the party aggrieved, when the eight days expired, if not previously brought up, might appear and say that the magistrate had exceeded his power. If the counsel were in that position he could understand it.

Mr. Abbott.—Of course, I would be in a much stronger position. To be sure it is an elementary principle that the warrant of commitment must show the jurisdiction on the face of it ; but this is not a warrant of remand in conformity with the statute. By that same warrant, which sends a prisoner to confinement, the jailer is ordered to bring him back again on some day specified in the commitment. The intention of the law is plain, that by the warrant which commits him, the time of his discharge, under certain circumstances, is to be settled.

Judge Mondelet.—We know not how these prisoners are before the Court. Are they under examination under the provision of the Ashburton Treaty ?

Mr. Abbott.—No.

Judge Mondelet.—Suppose they are to be dealt with under the Ashburton Treaty, is the Judge of the sessions, in his mode of action, to be strictly and exclusively governed by this statute ?

Mr. Abbott.—In my opinion, the law observed in this case does not apply to the Ashburton Treaty—if we were called on to argue whether a justice of the peace, who commits these prisoners, is bound to follow the terms of this act, we might urge that it is the terms of our statute which should regulate the conduct of such justices. The Court will perceive that by the statute passed to enable Judges to administer the Ashburton Treaty, there is no power given to remand at all.

Judge Drummond.—Was there no power to remand before that statute was passed ?

Mr. Abbott.—Suppose it to be a necessary consequence that there should be a remand, is it not to be confined to some period ? Could the magistrate who arrests, leaving this statute altogether out of the question, under the act passed to facilitate the execution of the Ash-

burton Treaty, commit the prisoners for an unlimited time, or as long as he pleases?

Judge Drummond.—If the magistrate does not name the day in which the prisoners are to be brought up, does that deprive him of his jurisdiction?

Mr. Abbott.—I can satisfy your Honors that under the statute passed to facilitate the execution of the Ashburton Treaty, this Court has not the power to remand. I maintain this is a power beyond the magisterial jurisdiction.

Judge Mondelet.—If that magistrate exceeds his jurisdiction, there must be a remedy; if he commits an act of oppression he must be restrained. But the power of remanding does exist, even if it does not appear in the statute; such a power is essential, and if the magistrate exceed his authority he must be brought to account for it. But there can be no excess of jurisdiction.

Mr. Abbott.—What I said before and repeat is—that a magistrate has no power to commit a man for an unlimited time. If a warrant commits a prisoner for a longer period than the law allows, he is entitled at once, without waiting for the expiration of his term, to come before the Court and claim his discharge, in consequence of an illegal commitment. Such a case would be analagous to the present one. If there is any right in a magistrate to remand at all, it must be exercised in a reasonable manner; and he must state what extent of jurisdiction he assumes to himself. If the act be done under the statute, he cannot remand for a longer period than the time provided for by the statute. I merely wish *prima facie* to show that the case deserves consideration: and I can produce authorities.

Mr. Kerr.—The first point to be determined is, whether under any circumstances connected with a remand for further examination a writ can issue for a *habeas corpus* or not. I defy the learned counsel on the other side to show a case where a warrant of commitment being invalid and bad, the right to apply for a writ of *habeas corpus* did not exist. I admit that when a warrant for commitment or examination is good on its face, no writ of *haheas corpus* can issue; but when such a warrant is bad on its face, a writ of *habeas corpus* can issue. I would ask is there no difference between remanding prisoners for an indefinite length of time, and bringing them up at a stated time, as laid down in the statute? If we are precluded from making this allegation we shall be told that prisoners under examination have no right to a writ of *habeas corpus*. And would not a motion for *habeas corpus* be as applicable three years hence as it is to-day, if the crown came forward and said, "These men are still under examination?" These men have a right to the *habeas corpus* whether under examination or not, if the warrant

for their commitment be imperfectly drawn up, and if it has been shown that the magistrate exceeded his jurisdiction.

Judge Aylwin said the matter was very easily disposed of. An application had been made for a *habeas corpus*, in order that a writ should issue on two commitments. Now, each of these commitments was perfectly sufficient, and the defence would take nothing by their petition.

Judge Mondelet said that this decision of the Court was founded on elementary principles, which admitted of no doubt. It was essential, in common law, that the Judge of the sessions, who was invested with jurisdiction correctly exercised, should have the power of remanding a prisoner at his own discretion. These men, for whom application was made, must and shall be protected if they have a right to it, and the community must and shall be protected according to law. The whole matter shall be conducted according to law, and not according to prejudice and popular clamor. The Judges will see that the law is carried out, whether the parties accused be or be not liberated. In this country the Judges have nothing to fear either from crown or people, and will do their duty as the law directs.

Judge Drummond agreed with the decision of the other two learned Judges. He observed that Messrs. Abbott and Kerr had argued the case like expert lawyers, as they were, and without the slightest design of exciting prejudice. The Judges had to perform a solemn duty, and he hoped that all knew they would do it without regard to party or prejudice. He agreed with his *confrères* because he believed there had been nothing irregular in the proceedings, though the most regular course would certainly have been to fix a day on which the accused should be brought up.

Judge Aylwin—The order of the Court is, that the defence take nothing by their petition.

PROVINCE OF CANADA, } To all or any of the Constables, or other
District of Iberville. } Peace Officers, in the District of Iberville:

Whereas, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, and Marcus Spurr, all late of the town of St. Albans, in the County of Franklin, in the State of Vermont, one of the United States of America, laborers, have this day been charged, upon oath before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace, in and for the City of Montreal, including the District of Iberville aforesaid, under and by virtue of the proclamation to that effect made and published, for that they on the nineteenth day of October instant, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars, current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont and the said United States of America, from the person, custody and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take and carry away against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of said State.

These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, and Marcus Spurr, and to bring them before me at the Court-house in the City of Montreal, in the said District of Montreal, to be dealt with according to the provisions of te statutes in such case made and provided.

Given undehmy hand and seal, at the town of St. Johns, in the said District, this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

(Signed) CHARLES J. COURSOL,
Judge of the Sessions of the Peace.

WARRANT ISSUED IN VERMONT.

To Leonard Gilman, Esq., one of the Justices of the Peace within and for the County of Franklin, in the State of Vermont, comes Chellis T. Safford, Grand Juror, within and for the town of St. Albans, in the County of Franklin, in the State of Vermont, and gives said justice to understand in and upon his oath of office, complaint makes that Squire Turner Teavis, Alamanda Pope Bruce, Marcus Spurr, Charles Moore Swager, Bennett H. Young, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, *William H. Hutchinson*, Samuel Eugene Lackey, and Thomas Bronsdon Collins, of St. Albans aforesaid, with force and arms at St. Albans aforesaid, to wit: on the nineteenth day of October in the year of our Lord one thousand eight hundred and sixty-four, in a bank-building then and there situate, and being and known and called by the name of the St. Albans bank, in and upon one Cyrus Newton Bishop, he the said Bishop there and then being the teller of said bank, there and then being in the peace of God and the State of Vermont aforesaid, feloniously did make an assault, and him the said Cyrus N. Bishop in bodily fear and danger of his life in the bank building aforesaid, there and then feloniously did put, and one thousand bills commonly called bank bills issued by the St. Albans bank, said bank being an incorporated bank, in the said State of Vermont, and the property of the said bank, and of the denomination and value of ten dollars each, one thousand bills commonly called bank bills issued by said bank, and of the property of said bank, and each of the denomination and value of twenty dollars, two thousand bills commonly called bank bills issued by the said bank, and the property of said bank, and of the denomination and value of five dollars each. Two thousand bills commonly called bank bills issued by the said bank, and of the denomination and value of one dollar each; ten thousand bills commonly called bank bills issued by the said bank, and the property of said bank, and of the value and denomination of two dollars each; four hundred bills commonly called bank bills, issued by and the property of said bank of the denomination and value of fifty dollars each, and five hundred pieces of silver money commonly called half dollars, each of the denomination and value of fifty cents each, current money of the United States, and the property of said bank, from the person and possession and against the will of the said Cyrus Newton Bishop, in the said bank building, as such teller as aforesaid, then and there feloniously and violently did rob, steal, take, and carry away, contrary to form, force, and effect of statute of said State in

such case made and provided, and against the peace and dignity of said State.

CHELLIS S. SAFFORD,
Grand Juror.

Witnesses, CYRUS N. BISHOP and others.

STATE OF VERMONT, } St. Albans, October the twentieth, in the
Franklin County, SS. } year of our Lord one thousand eight hun-
hundred and sixty-four. The above complaint exhibited to me,

LEONARD GILMAN,
Justice of the Peace.

STATE OF VERMONT, } To any Sheriff or Constable in the State,
Franklin County, SS. } Greeting :—

By the authority of the State of Vermont, you are hereby commanded to apprehend the bodies of the said Samuel Eugene Lackey, Thomas Bronsdon Collins, Squire Turner Teavis, Alamanda Pope Bruce, Marcus Spurr, *William H. Hutchinson*, Charles Moore Swager, Bennett H. Young, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, and Dudley Moore, or either of them, and by whatever name they or either of them may be known or called, and them have before me at the office of the Sheriff in St. Albans aforesaid, there and then to answer unto the foregoing complaint, and to be further dealt with according to law. Fail not, but due service and return make. Dated at St. Albans, in the County of Franklin, this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

LEONARD GILMAN,
Justice of the Peace.

STATE OF VERMONT, } St. Albans, October twentieth, in the year
Franklin County, SS. } of our Lord one thousand eight hundred and sixty-four. I hereby certify the above to be true copies of the complaints made to me, and my account issued thereon.

LEONARD GILMAN,
Justice of the Peace.

[5 cent stamp.]

STATE OF VERMONT, } I, Joseph H. Brainerd, clerk of the county
Franklin County. } Court of the county of Franklin, in the State of Vermont, which Court is a common law Court of record, do hereby certify that Leonard Gilman, Esq., was on the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-four, and still is a Justice of the Peace in and for the said County of Franklin, duly elected and qualified to act as such magistrate; that the signature to the foregoing certificate, purporting to

be the signature of said Gilman, is the genuine signature of said Gilman, and that full faith and credit ought to be given to the official acts of said Gilman.

In testimony whereof I have hereunto affixed the seal of the County Court of the County of Franklin aforesaid, and subscribed my name, officially, at St. Albans, in said County of Franklin, this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-four.

[Seal of C.C.]

[Stamp 5 cts.] JOSEPH H. BRAINERD, *Clerk.*

STATE OF VERMONT, *Franklin County, SS.* } I, Asa Owen Aldis, of St. Albans, in the County of Franklin and State of Vermont, one of the Judges of the Supreme Court of the State of Vermont, and chief Judge of the County Court of the County of Franklin and State of Vermont, hereby certify that Joseph H. Brainerd, whose signature is appended and subscribed to the above certificate, is the clerk of the said County Court of the County of Franklin aforesaid; that I am well acquainted with and know the ignature of the said Brainerd, and the seal of the said County Court; that the signature subscribed to the above certificate is the genuine signature of the said Joseph H. Brainerd, and the seal affixed to the said certificate is the seal of the said County Court, of the County of Franklin aforesaid; that the said Court is a common law Court of record; that the said Brainerd as clerk of the said County Court, has the custody of the record of all commissions issued to Justices of the Peace within and for the County of Franklin, and is the proper officer by law to certify as to the election, qualification, and authority of Justices of the Peace, acting within and for the county of Franklin aforesaid.

In testimony whereof I have hereunto set my hand, at St. Albans, in the County of Franklin aforesaid, this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-four.

ASA OWEN ALDIS,
Judge of the Supreme Court of the State of Vermont, and Chief Judge of the County Court of the County of Franklin in the State of Vermont.

[5 cent stamp.]

UNITED STATES OF AMERICA, STATE OF VERMONT, *Executive Department.* } I, John Gregory Smith, governor of said State of Vermont, do hereby certify that the foregoing document is authenticated according to the laws of said State, and of the United States; that the signatures of the respective officers attatched to said certificates of authentication are genuine; and

that said officers respectively hold and exercise the offices which they in and by said certificates purport to hold and exercise; and that the seal of the said County Court of the aforesaid County of Franklin thereon, is genuine, and that full faith and credit ought to be given to said documents and certificates.

In witness whereof I have caused the seal of said State to be hereto attached, and have affixed my signature hereto, at Montpelier, this thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-four.

[Seal of State of Vermont.]

[5 cent stamp.]

J. GREGORY SMITH.

By His Excellency the Governor,
Attest, G. W. Bailey, Jun., Secretary of State.

Endorsed.

STATE OF VERMONT,

versus

Squire Turner Teavis,
Alamanda Pope Bruce,
Marcus Spurr,
Charles Moore Swager,
William H. Hutchinson,
Bennett H. Young,
George Scott,
Caleb McDowall Wallace,
James Alexander Doty,
Samuel Simpson Gregg,
Dudley Moore,
Samuel Eugene Lackey,
Thomas Bronsdon Collins.

Filed, 9th Nov., 1864.
C.J.C., J.S.P

EVIDENCE

TAKEN IN THE

ST. ALBAN'S BANK CASE.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

The examination of *Cyrus Newton Bishop*, of the town of St. Albans, in the State of Vermont, one of the United States of America, teller of the St. Albans bank, now in the city of Montreal, taken on oath this seventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys

and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent Cyrus Newton Bishop on his oath saith—On the nineteenth day of October last past, I was fulfilling the duties of teller in a banking institution. known as the St. Albans bank, in the town of St. Albans aforesaid, during which day, and between the hours of three and four of the clock, in the afternoon, two persons whom I had not known before, but whom I have since identified and whom I now see in the Court, and point out as two of the prisoners under examination. These two persons are now known to me by the names of Thomas Bronsdon Collins and Marcus Spurr, such being the names to which they answer. At the time the said Collins and Spurr entered the said bank upon the said nineteenth day of October last, I was behind the counter of said St. Albans bank. They immediately advanced towards the counter behind which I was, and each of them pointed a revolver of a large size to my breast, I being then about three feet distant from them. Seeing the revolvers thus presented towards me, I sprang from behind the counter to the director's room which was near at hand, and attempted to close the door, but the said Collins and Spurr having followed me, forced the door open, and in doing so, I was struck on the forehead, and bruised, leaving a mark which was visible for some days. After having thus forced open the door, one of the prisoners, the said Thomas Bronsdon Collins, laid hold of me with one hand by the collar of my coat, and with the other presented a revolver to my head, so near that it almost touched me. The other prisoner, Marcus Spurr, also presented a revolver to my head, at the same moment, both of them stating that if I made any further resistance or gave any further alarm, they would blow my brains out. I asked them what the programme was, and they answered that they were Confederate soldiers detailed from General Early's army to come north, and to rob and plunder as our soldiers were doing in the Shenandoah valley. They then asked me where our gold was, to which I answered we had none. They next asked me if we had any silver, and I told them we had. At this moment I observed that three other persons had entered the bank; they were and still are unknown to me. They joined the other two, and seemed to know each other, and acted in concert with each other. The leader of the gang then proceeded to administer some kind of an oath to me. He compelled me to raise up my

right hand, and called upon me to solemnly swear that I would not give alarm or fire upon the Confederate soldiers; that is about all I can remember of the oath in question. There was also in the director's room of the said bank at the time to which I have referred to, one Martin A. Seymour, a clerk of the said bank: revolvers were also presented at him in the director's room by some of the said five persons, who were then acting in concert, and amongst whom were the said Collins and Spurr. They threatened him, and said that if he made any resistance and gave the alarm, they would blow his brains out also. After having thus threatened him, the oath of which I have before spoken, was administered to him and to me. Both of us were then detained as prisoners in the said room, two of the said five persons acting as guard over us, with a revolver in each hand: I was then ordered to show them the place in which the silver was kept, and I opened the safe in the said director's room where the said silver was kept. So soon as I did this, one of the five persons pulled out three bags of silver containing about fourteen hundred dollars altogether. One of the party then remarked that they could not carry the whole of it, upon which they tore open the bags, and took away therefrom about four hundred dollars of the silver they contained. Each of the said five persons took a share of the said silver. I observed that four of these persons had satchels made, I believe, of morocco, into which they put the said silver, as also into their pockets. During the time the silver was thus being taken, Mr. Seymour and myself had to look on, being threatened that if we offered any resistance, we would have our brains blown out. After having thus taken the silver, three of the party went into the banking room, in which there was a safe for keeping of the bank bills of the said bank, and for the safe keeping of other currency. Said Collins and Spurr were two of the three said persons; the other two remained guarding the said Seymour and myself in the way I have already stated. From this latter safe, the said last mentioned three persons took and carried away a sum of money amounting as nearly as I can now state to between seventy and eighty thousand dollars current money of the said United States of America. About forty thousand dollars of this amount was composed of bank bills issued by the said St. Albans bank, about twenty-four thousand dollars in promissory notes of the said United States, commonly called and known as greenbacks. They also took from the said safe other sums of money composed of bank bills issued by different banks in other States of the said United States, but all of which was current money as aforesaid. I now see before me in Court, twenty-four packages of bank bills, and greenbacks which I recognize and identify as the property of the said St. Albans bank, and which forms a part of the sum of

money I have already stated was stolen from the said St. Albans bank, by the said five persons, amongst whom were the said Thomas Bronsdon Collins and Marcus Spurr, on the said nineteenth day of October last. The said packages of bills and greenbacks are tied each with a paper band, eighteen of the said packages are tied with paper bands, which I recognize and identify as having been put on the said packages before they were stolen as aforesaid. Three of the said packages have upon them the letters "B. B., cash,"—the letters "B. B." representing the name of Bradley Barlow, and the word "cash" his occupation of cashier in the said bank. Fifteen of the packages now before me, are marked in pencilling by the said Martin A. Seymour, with the figures "1000" pencilled on each, and thereby representing each package as containing one thousand dollars. Two of the said packages are pencilled by the said Seymour, the one with the figures "500" representing it to contain five hundred dollars, the other similarly pencilled with the figures "100" representing it to contain one hundred dollars. These last mentioned packages in number seventeen, contain as per mark bills issued by the said St. Albans bank to the amount and value of $14,600 current money aforesaid. One of the said seventeen packages by the said pencil mark is represented as containing one thousand dollars of the promissory notes of the United States, commonly called greenbacks, and current money aforesaid. In addition to the said seventeen packages, I have now also before me seven other packages represented by the figures in writing and pencilling, as containing altogether fifty-eight hundred and ninety-five dollars. One of these last packages I also observe upon it the figures "1000" in pencilling by the said Martin A. Seymour, making altogether twenty-four packages represented by their respective marks to contain twenty-one thousand four hundred and ninety-five dollars, which I declare to be the property of the said St. Albans bank, and a part of a larger sum stolen in manner as aforesaid, from the said bank. The said packages of bank-bills, greenbacks, are now exhibited to me, by Guillaume Lamothe, Esq., chief of police, in whose possession and custody they have been placed; and I was informed that they were taken with other sums of money from the persons of the prisoners, but I have no personal knowledge of it. The amount of money stolen from the said bank, was taken and carried away by the said five persons hereinbefore referred to, and amongst whom were the said Thomas Bronsdon Collins and Marcus Spurr, against my will and consent, and by their having put me in bodily fear of my life; and I further say, that I believe that if I had offered any resistance to the robbery in question, or attempted any alarm, these persons would have, as in the event of my doing so, they had threatened to do, blown my brains

out; and I further believe that they would have dealt in like manner with the said Martin A. Seymour, if he had offered any resistance to the said robbery. After the said five persons had entered the bank, they turned the key of the lock of the entrance door, so as to prevent ingress or egress; and during the time they were engaged in robbing the bank, a knock was heard at the door, upon which one of the said party of five opened it, and Samuel Breck, of St. Albans aforesaid, a merchant, entered. The moment he did so, the person who opened the door locked it: one of the said party then took hold of the said Breck by the collar of his coat with one hand, presenting a revolver at him with the other. This person demanded his money, and forced him towards the counter. The said Breck, thereupon handed to this person a sum of money which I understood amounted to three hundred and ninety-three dollars. A note of the said Breck fell due that day, for five hundred dollars. I heard Breck say to one of the said party, that his money was private property, and I think that one of them replied, "I dont care a damn for that." After taking his money he was forced by the party into the said director's room, and there, with Seymour and myself, detained as a prisoner. He was also told by the same persons, that if he made any alarm, they would shoot him. After this occurrence, a boy of seventeen or eighteen years of age, a clerk in the store of Joseph S. Weeks, a merchant of the town of St. Albans, also knocked at the door of the said bank, and was admitted by one of the said party; he was then also laid hold of by one of the said party, and forcibly thrust into the said director's room, and there, with the rest of us, kept a prisoner. Immediately after the accomplishment of this robbery, and before the said five persons had left the said bank, I heard several reports of fire arms as if discharged opposite the said bank, and thereupon three of the said five persons left the said bank, amongst whom were the said Collins and Spurr, and in less than two minutes afterwards, the remaining two left the bank, also walking backwards out, and with their revolvers pointed at me, and the others detained in said room. As soon as the bank was clear of the said five persons, I stepped out on to the foot-walk in front of the said bank, and as I did, I saw the several persons on horseback, riding in a northerly direction. I judged they were between twenty-five and thirty men; some of them discharged large revolvers in all directions at the citizens, as they were passing by amongst whom were women and children. This party to which I referred was dressed in civilian's dress, and so also were the five persons who committed the robbery in the said St. Albans bank. They presented nothing in their appearance or dress to lead to the belief that they were soldiers, unless it was their possession of revolvers. They all seemed to be acting in concert together, and rode off from

the said town of St. Albans with great speed upon horses. The money so stolen as aforesaid, was in my custody and possession, up to the time of the said robbery. And my further examination is continued till to-morrow morning at at ten o'clock, and I have signed

CYRUS NEWTON BISHOP.

Sworn and taken before me this seventh day of November, 1864.

CHAS. J. COURSOL, J.S.P.

On the eighth day of November in the year of our Lord one thousand eight hundred and sixty-four the deponent Cyrus Newton Bishop above named, re-appeared before me the undersigned Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, and being sworn, deposeth and saith:— Since the close of my examination yesterday, I counted the money contained in the twenty-four packages hereinbefore described, and I find that they contain the amount of money already mentioned, namely: twenty-one thousand four hundred and ninety-five dollars; seventeen of the said packages contain one thousand dollars each, in bank-bills issued by the said St. Albans bank, at St. Albans aforesaid; another of the said packages contains eleven hundred dollars of like bank-bills; another five hundred dollars of the same; another four hundred and ninety-five of the same; another four hundred dollars of the same; another one hundred dollars of the same; two other packages contain, one nine hundred, the other one thousand dollars in promissory notes of the said United States, commonly called greenbacks, making altogether the said sum of twenty-one thousand four hundred and ninety-five dollars current money of the said United States. I further recognize and identify as belonging to the St. Albans bank aforesaid, and forming a part of a larger sum stolen from the said bank, on the said nineteenth day of October last, the sum of twenty-eight hundred and forty dollars, being a part of a larger sum produced by John O'Leary, a witness examined in this matter, and which sum of money is now before me. Two thousand dollars of this last mentioned sum is in the promissory notes of the said United States commonly called greenbacks; the balance is composed of bills issued by different other banks in the said United States. I identify the said sum of money by the paper bands around the packages in which it is contained. In addition to all the amounts of money hereinbefore spoken of and described by me, I now identify another sum of money produced this day by the said chief of police, amounting to nine hundred and fifty dollars in the promissory notes of the said United States of America, commonly called greenbacks, as forming a part of the money stolen from the said bank, on the

nineteenth day of October last, and the property of the said bank. This last sum of money I identify by the paper bands around the packages in which it is contained, and also by the figures in penciling which are to be seen on the larger band which surrounded all the packages and name by the figures "1000" which I recognize and identify as having been put there by myself; I also recognize upon two of the smaller paper bands which surround the smaller packages the handwriting of Abner Forbes, cashier of the Vermont Central Railroad, and upon one of the said bands, the said Abner Forbes has written in figures "371," and in writing the word "Hartland." I have a particular knowledge of this band, because it surrounded a sum of three hundred and seventy-one dollars, which was deposited in the said bank, before the robbery in question, by the said Forbes; and this band so marked was afterwards taken from the said package of three hundred and seventy-one dollars, and put by me around a package of one hundred dollars, the same which I now recognize. The second smaller paper band I also identify by the figures "149," and the words W. Hartford" written upon it, and which I recognize to be the hand-writing of the said Abner Forbes, and which surrounded a package of one hundred and forty-nine dollars by him also deposited in the said bank, previous to the said robbery. After the said deposit, I used the said band to tie the package of bills which it now surrounds. I further rccognize and identify fifteen other packages of money now produced by the said chief of police as forming a part of a larger sum stolen from the said St. Albans bank, on the said nineteenth day of October last. The said packages contain altogether twenty-six hundred and ninety-five dollars in various denomination, some of which are promissory notes of the said United States, called greenbacks, and other the issues of different banks in the said States. I recognize this sum of money by the paper bands in which it is contained. I identify them because I have used them in the bank. I further identify two other packages of money now produced by the said chief of police, containing one, one thousand dollars, the other, nine hundred and eighty-four dollars, as forming a part of a larger sum stolen from the said St. Albans bank on the said nineteenth day of October last, and which is the property of the said bank. Upon one of this last named packages, I observe in pencilling the figures "1000," and the letters "B. B." representing Bradley Barlow, cashier of the said bank. These figures and letters, were put there, by Martin A. Seymour, a clerk in the said bank. The other package I recognize by the paper band surrounding it. And I further say that, that other sums of money have been on the said nineteenth day of October last, stolen from the said bank, which I have not seen since the robbery in question. All the moneys which

I have identified as having been stolen from the said bank, on the said nineteenth day of October last, were so stolen by the said five persons to whom I have previously referred, and among whom were Thomas Bronsdon Collins and Marcus Spurr, two of the prisoners now under examination, and identified, and pointed by me.

The foregoing deposition having been read over in the presence of the persons so charged, the deponent declares the same to contain the truth and hath signed

CYRUS NEWTON BISHOP.

Sworn and acknowledged before me at Montreal the 8th November, 1864.

CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the prisoners so above charged, they are asked if they have any questions to put to the deponent. They declare they have, and the following evidence is taken in Cross-examination by Mr. Kerr the prisoners' counsel.

I do not recollect that the persons who entered the bank in the first instance said anything to me previous to my getting in the director's room. I was very much frightened when they pointed their revolvers at me. The first thing that I recollect of now that I asked him was, "What this meant," and what the programme was? He then said that they were Confederate soldiers detailed from Early's army, to come north to rob and plunder, the same as our soldiers were doing in the Shenandoah valley. When they took hold of my person by the collar, they said that if I made any further resistance or gave any alarm, they would blow my brains out. I might have asked them to spare my life, some time during their presence there, but I cannot say positively that I did so. Fright and confusion consequent thereon tended to confuse my thoughts at first, still I recollect what took place at first; I am certain that I detailed all the incidents correctly; I may have overlooked some however; I cannot swear that I did not ask them to spare my life. I understood, when they said that they were Confederate soldiers, that they were soldiers from the South. North and South have been at war with each other for some years past, and are still so. Collins told me, after the silver was taken, that if their soldiers were not fired upon, they would not harm us. I don't remember the whole of the oath administered to me by Collins, because I did not stop to study it at that time. I was willing to do anything at that time to save my life. The initials "C. N. B.," upon the package of one thousand dollars greenbacks, were put by me at Stanbridge,

on or about the twenty-second day of October last; the figures "1,000" were also put by me there. I identified said packages at Stanbridge by the figures "1,000" in pencil on the paper band of the said parcel, put there by Martin A. Seymour. I swear positively that those figures are Martin A. Seymour. I identified the package of nine hundred dollars, solely by the paper bands enveloping the small packages, of which it is composed. I do not know that there is anything very peculiar about those bands. It is a common thing in banks to have bands of that kind round parcels of their notes. I recognize the package of nine hundred and eighty-four dollars, merely by the band upon the small packages it contains, knowing that we had such money put up. The package of ninety-five dollars in greenbacks, of different denominations, included in the large package marked as containing two thousand six hundred and ninety-five dollars, were loose when I first saw them at Stanbridge, and the band was placed round them by me. The package of five one hundred dollars greenbacks, were also loose when I first saw them, and were banded by me in Stanbridge. There were no distinguishing marks upon the greenbacks so put up by me at Stanbridge, to show that they had been the property of the St. Albans bank, and I identified them because they were in with others upon which there was special marks. I cannot identify the hundred dollar greenbacks in the package by any other mean, that he was in among others that were marked. When I came out of the bank, as mentioned in my examination-in-chief, the parties on horseback, who had fired pistols as I have mentioned, were at a distance of about one quarter of a mile from me. I cannot tell how many people there were passing the said band of men at the time I went on the side-walk. I cannot tell how many women and children I saw near them. I saw half-a-dozen near them. I cannot say that I saw them firing when I came on the foot-walk, but they were firing when I saw them in front of the bank. I saw them previous to leaving the bank, through the window. I did not see any person wounded by the shots fired by the party. I still swear that they were firing at the citizens, because I saw them pointing their pistols down to the citizens, and saw and heard them discharge their pistols. Perhaps two minutes elapsed between the time that the last two men left the bank and my going out. I saw the men on horseback firing as aforesaid, previous to the two men leaving the bank. The band had not left the town of St. Albans, when I came out on the foot-walk. I think that the town of St. Albans extends in a northerly direction more than one quarter of a mile from the St. Albans bank. I was in the director's room when the shots were fired, and from the place I stood I could see through the banking room into the street.

On re-examination by Mr. Ritchie on the part of the prosecution the deponent saith:—When I said, upon my cross-examination, that the parties were soldiers from the South, I meant to say that they claimed to be such. Immediately before the robbery of the bank, the bank was in possession of notes of the same kind and denomination as those referred to in my cross-examination, and notes of those descriptions were taken away from the bank by the parties I have spoken of.

The prisoners counsel and the counsel for the prosecution having declared that they had no further question to put to the deponent and this deposition having been read in the presence of the said prisoners the deponent declares it contains the truth and hath signed

CYRUS NEWTON BISHOP.

Sworn, taken, and acknowledged on the day, month, and year hereinbefore mentioned before me.

CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal.

POLICE COURT.

The examination of Henry Nelson Whitman, Esquire, of the Township of Stanbrige in the District of Bedford, Justice of the Peace taken on oath this third day of November in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court House, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols commonly called revolvers, loaded with powder and balls and capped, in and upon one Albert Sowles, feloniously did make an assault, and him, the said Albert Sowles, in bodily fear, and in danger of his life, did then and there put; and a certain sum of money, to wit, to the amount of nine thousand dollars current money of the said United States of America, and of the value of nine thousand dollars current money aforesaid; also certain valuable securities, to wit, certain United States Treasury Notes to the amount and value of twenty-nine thousand six hundred and fifty dollars current money aforesaid; certain promisory notes of the United States of America, bearing five per cent. interest, called five per cent. legal tenders, to the amount and value of fourteen thousand dollars; and certain promisory notes of the said United States of America, called five per cent.

compound interest notes, to the amount and value of one thousand dollars current money aforesaid, of the moneys and property of the First National Bank of St. Albans, at St. Albans aforesaid,—a body corporate, constituted and recognized by the laws of the said United States of America,—from the person, custody, and possession, and against the will, of the said Albert Sowles, and in his presence, then and there, feloniously and violently, did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State.

This deponent, *Henry Nelson Whitman*, on his oath saith:—I recognize among the prisoners, now in Court, the following, naming themselves respectively,—Samuel Eugene Lackey, Marcus Spurr, James Alexander Doty, Joseph McGrorty, Alamanda Pope Bruce, and Thomas Brondson Collins. I first saw four of them, viz.: Samuel Eugene Lackey, Marcus Spurr, Alamanda Pope Bruce, and Thomas Brownston Collins, at Stanbridge, aforesaid, during the night of the 19th, and, to the best of my knowledge, about one o'clock on the morning of the 20th day of October last past. Two of them, namely, Bruce and Spurr, were in bed, at a tavern kept in the village of Stanbridge, by one William Elder; and I made prisoners of them, and put keepers over them. The prisoner, Collins, came into Henry Bacon's hotel, in Stanbridge East, between twelve and one o'clock in that night. I was in the hotel at the time, and ordered him into custody, and placed keepers over him and the prisoner, Samuel Eugene Lackey, was arrested on the side-walk near Mr. Bacon's hotel. He was also arrested by my orders, in my presence, and brought into Mr. Bacon's hotel. They were all dressed in common civilians' dress. The two others, namely, James Alexander Doty and Joseph McGrorty, were arrested by me the following night, that is to say about two o'clock in the morning, of the 21st day of October last. They were then sleeping in a barn, in the first Concession of Dunham, in the same district; they were also dressed in civilians' clothes. These two last men were armed, each having a Colt revolver. The first two, namely, Bruce and Spurr, were also armed when arrested, having each two revolvers. The remaining two prisoners, before named, were not armed. These persons so arrested had their clothes spotted with mud, and some of them having even mud on their faces, having the appearance of persons who had travelled rapidly over muddy roads. I adopted the precaution of searching the whole of these men when they were arrested, telling them they were arrested for robbing the St. Albans bank. I found money upon all of them; their pockets were all filled. Upon the arrest of the said Bruce and Spurr, at Elder's tavern, the following packages of money, to wit, one

package of bank bills of the St. Albans bank, containing one thousand dollars, and marked on the cover with the initials, "C. N. B.," being the initials of Cyrus Newton Bishop, the teller of the St. Albans bank; another package of bank bills of the same bank, of the denomination of twenties, bearing also on the cover the initials of Mr. Bishop; also another package of United States notes, commonly called greenbacks, to the amount of nine hundred dollars, likewise counted and bearing the initials of Mr. Bishop, and another package of the same, to the amount of one thousand dollars; another package of bank bills of the St. Albans bank, to the amount of one thousand dollars, and initialed on the cover, as above stated; another package of bank bills of the same bank, to the amount of one thousand dollars, marked on the cover in the same manner; another package of bills of the same bank, to the amount of one thousand dollars, likewise initialed on the back; another package of bills of the same bank, of the denomination of fifties, to the amount of one thousand dollars, likewise marked on the cover; also another package, containing one thousand dollars of bills, of the same bank; eleven other packages of bills of the same bank, each containing one thousand dollars, and marked in the same way on the back; also a package of bills of the same bank, to the amount of five hundred dollars; another package of the same, to the amount of four hundred dollars; another of the same, to the amount of four hundred and ninety-five dollars; another of the same, to the amount of one hundred dollars. Many of the packages had no bands on them, and others had, and Mr. Bishop put new bands on them, and marked them, having counted them; and likewise a package of United States Treasury notes, commonly called seven and three-tenths Treasury notes, to the amount of fourteen thousand eight hundred dollars. The said Bruce and Spurr, as I have stated, were in bed. When I entered their bed-room, they were sleeping together in the same bed. These packages of money and Treasury notes I took out of the pockets of their coats and trousers, and some packages I took loose under their pillows, from under their heads; and I also found in their pockets a few dollars in American half dollars. These packages of bank bills, and treasury notes, and silver I have now handed to Guillame Lamothe, Esq., chief of police, order by of the judge of sessions. I found upon the prisoners, Lackey and Collins, when I searched them in Mr. Bacon's hotel: two packages of bank-bills of American banks: one containing nineteen hundred and eighty-four dollars, in the other package, including greenbacks and New England bills, to the amount of two thousand six hundred and ninety-five dollars, which I now hand over to the said chief of police, by order of the judge of sessions. They had these packages of money and greenbacks in their pockets. I found

upon the prisoners, James Alexander Doty and Joseph McGrorty, upon my arresting them in the barn, packages of bank-bills, one of which packages now produced by me, contains five thousand two hundred and sixty dollars; another package of bank-bills and greenbacks, marked as containing three thousand and sixty-five dollars; another package of bank-bills, marked as containing seventeen hundred dollars; one package principally greenbacks, and a few bank-bills, marked as containing fourteen hundred dollars; one St. Albans bank bill for twenty dollars; and twelve hundred dollars of United States five-twenty bonds, which I now produce and hand over to the said chief of police, by order of the judge of sessions. I found these packages of money and United States notes in the pockets of the said Doty and McGrorty, when I so searched them in the said barn.

And my further examination is continued till to-morrow morning at ten o'clock, and I have signed

H. N. WHITMAN.

Sworn and taken before me this }
3rd day of November, 1864. }

CHAS. J. COURSOL, J.S.P.

And on this day the fifth day of November in the year of our Lord one thousand eight hundred and sixty-four, the above deponent *Henry Nelson Whitman* appears before the undersigned Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal and having been sworn in the presence of the above named prisoners deposeth and saith:

Upon the arrest of the prisoners, Bruce and Spurr, at William Elder's tavern, I found in their possession four revolvers, which I suppose to be of Colt's manufactory, each revolver being covered with leather belts or holsters. These revolvers I now produce, and they are in the same state now as when I found them in the possession of the said Bruce and Spurr. They had them under their pillows in the bed they were sleeping in. Each revolver had six chambers, some of them loaded and capped, and a few of them having the appearance of having been discharged. These revolvers I now mark with my initials on the belts for the purpose of identification, and now hand them over to the chief of police, by order of the judge of session. I found no arms upon the prisoner Collins, nor upon the prisoner Lackey. I found, upon the arrest of the prisoners, Doty and McGrorty, in the barn, and under their clothing thrown upon the hay, two revolvers of a similar description, contained each in a leather belt, and I now produce them in the same state as I found them, and I now mark them in the same manner for identification, and give them to the

said chief of police, by the same order. These revolvers are also loaded, and almost all the chambers are capped. From Stanbridge East to St. Albans, in the State of Vermont, there is a direct road, and the distance is about twenty-five miles, and from the place where Doty and McGrorty were arrested to St. Albans, there is about the same distance; but the barn, where they were secreted, is about a distance of eighty rods from the road leading from Stanbridge to Dunham Flats. I took possession of the revolvers, as well as of all the money I found in the possession of the said prisoners, and kept them safely until I produced them before this Court. When I arrested the said Bruce and Spurr, one of them asked me whether I was a British officer, and I answered that I was a magistrate, and that I arrested them for robbing the St. Albans banks. One of them, whom I believe to be Bruce, said, we are Confederate soldiers, and that the money they had captured from St. Albans, was in retaliation for the destruction of private property by Sheridan, in the Shenandoah valley. At the time this conversation took place, I had taken possession of the money found upon them. They then asked me to telegraph to C. C. Clay, at Montreal, to inform him that they were captured, and to do his best for them. They refused giving their names to me. I informed them tha. there was no telegraphic communication from that place; that they would as soon get an answer by letters, and the next day they wrote a letter, addressed, as I believe, to C. C. Clay. They told me that the said Clay was a Confederate agent at Montreal. The bank bills, spoken of by me, and which I found in their possession, they both acknowledged to have taken out of the banks at St. Albans. In conversing with me, while they were in my charge, they also told me how they got away from St. Albans. They were both together in the same room with me at Elder's tavern. They said they had taken horses wherever they could find them in St. Albans; had put blankets on, and that many had no saddles on; and that they rode off to Canada, and that having no saddles, were badly chafed for riding so long; that when they got to Canada, they had abandoned their horses, in order to avoid pursuit. The morning following their arrest I found three horses loose, on the main road, without saddles or bridles. I secured them, and they were shortly afterwards claimed by their owners, residents of St. Albans. This is about all Bruce and Spurr said to me; and I made use of no threats, nor held out any inducements to them to make such statements; they were freely and voluntarily made. Upon the arrest of the prisoner Collins, and during the time he was in my charge, he made similar statements to me as those made by the other prisoners, as also did the prisoner Lackey. The prisoners Doty and McGrorty made to me similar statements, and admitted that

the bank bills and securities taken from them, and produced by me before this Court, had been taken by them from the St. Albans banks, with the exception of some small change in their wallet, which they said were their private moneys, and which I have this day returned to them, by order of the judge of the sessions. The statements of the four last prisoners referred to, were also voluntarily and freely made. Two or three days elapsed between the period of the first arrest and my handing over the six prisoners to the judge of sessions. They did not tell me where they had got their arms. Part of the last day these prisoners were in my custody, I had them all together in one room. They appeared to me to know each other very well, and seemed to be very glad to meet. Previously I kept them separate—two at one tavern, and two at another; and it was at their own special request to be permitted to meet together in one room, that I granted that request. I remember saying in the presence of, I believe, four of them, that they had shot two or three persons in St. Albans, namely, C. H. Huntingdon and one Morrison, and that it was not expected that the said Morrison would live. They said that they were sorry, and that their orders were not to take life, except in their own self-defence. They all admitted to me that there were twenty-one of them altogether at St. Albans.

The foregoing deposition having been read in the presence of the prisoners so charged the deponent declares the same to contain the truth and hath signed

H. N. WHITMAN.

Sworn before me at Montreal, this 5th November, 1864.

CHAS. J. COURSOL, J.S.P.

The following answers given upon Cross-examination by Mr. Kerr, counsel for the prisoners and in their presence.

Nothing but a verbal complaint, not on oath, had been made to me previous to my arresting the six prisoners mentioned in my examination-in-chief. This complaint was made to me between eleven and twelve o'clock at night by one Smith and Holmes. They told me there was a band on the way to this place, that is Stanbridge, who had robbed the banks at St. Albans, and shot men down in the streets. I said then there was no time to make out any writings, but I would proceed in person to arrest them, for I would not delegate any other person to arrest them, for fear they would abuse that power. I supposed at that time I had authority under the Treaty Act, but I have since learned it has been amended. I was informed by the parties who gave me

the information that the band of men who had robbed the banks must have in their possession a large amount of bank notes and securities, and the people of St. Albans were in pursuit of them. The said men did not tell me that the persons who had taken the money from the banks had declared that they were Confederate soldiers. I did not think about the money when I determined upon going to superintend the business, but I fancied that there might be some infraction of our laws by them, or the party in pursuit. About six men were with me when I entered Bruce and Spurr's room in Elder's tavern. They were those whom I had called upon to assist me. The money was taken from them in the bed-room. Some of it I took out of their pockets, and the other was taken from under their pillows, by a man of the name of Martindale, in my presence, and handed over to me immediately. I took it right over to the bank and had it counted by the director of the bank. I helped him do so, and one Mr. Blynn, a magistrate, also helped him. It was then rolled up and sealed in their presence. I think it was a little after two o'clock in the morning when the prisoners Bruce and Spurr were arrested. I do not think that half an hour had elapsed between their arrest and the counting of the money. Mr. Blynn accompanied me to the bank from Elders; C. H. Baker also. I did not count the money in the presence of the prisoners from whom it was taken. A person of the name of Knight who assisted me handcuffed the prisoners Bruce and Spurr. The next day I took handcuffs from two of the prisoners at Elder's and told Mr. Knight to take them off from the others. Collins was taken in Bacon's hotel, and was searched in a room. Soon after his arrest I went to arrest some more, but as they had gone away I went back to the room where I had left Collins under keepers, and as I entered the room some one had commenced pulling the money out of their pockets and laying it upon the table. I told them to stop for I must see from whom it is taken, and this money must be kept by itself. I then continued the search myself in person, and got what I supposed to be all he had; but found on the next day three one hundred dollar bills, which he, Collins, handed out to me, stating at the time, it was his private funds. I got from Collins in bills and greenbacks the amount of two thousand six hundred and ninety-five dollars. When I first saw Collins he had a satchel about his shoulders. When I returned and saw the men in taking the money out of Collins' pockets, he, (Collins,) I believe, complained that money had been taken by some of the men from his satchel.

Question.—Did you or did E. C. Knight arrest the prisoners Bruce and Spurr?

Answer.—I had previously sent for Mr. Knight to come and

assist me to arrest those men. He, and four or five others, went with me up to the door where they were sleeping. Knight went to knock at the door, and I ordered him away from the door. Another person, I think Martindale, burst the door, and he, Martindale, Cross, and I went in first, and the rest that were with me followed, and I told the prisoners that they were arrested for robbing the St. Albans banks; Martindale laid his hand upon them first, and then Knight jumped upon the bed and put handcuffs on them. I took some money in a roll from Collins' satchel. The two packages of notes now produced, marked as containing one, two thousand six hundred and ninety-five dollars, was taken from Collins' pocket; and the other, marked as containing nineteen hundred and eighty-four dollars, was taken from Lackey's pockets. The money I took from Collins' satchel is included in the package marked as containing two thousand six hundred and ninety-five dollars. The reason that the prisoners assigned for not giving me their names was that they were of respectable parentage, and that they did not wish their names to go back to their friends as having connection in this raid, and for the reason that it would give their friends unpleasant feelings. I swear that I have produced all the moneys and other effects either taken by me from the prisoners, or delivered to me by other people as having been taken from the prisoners, with the exception of a satchel. The prisoners' counsel declares having no further questions; and this deposition having been read in the presence and hearing of the said prisoners, the deponent declares it contains the truth, and hath signed

(Signed) H. N. WHITMAN.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

Examination of *John O'Leary*, of the city of Montreal, in the District of Montreal, detective police officer, taken on oath this 7th day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:— For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *John O'Leary*, upon his oath deposeth

and saith: On the twentieth of October last, I arrested one of the prisoners, who now gives his name as George Scott, and who is under examination at Farnham, which is distant from St. Johns in the District of Iberville, about nineteen miles. I was out there by the instruction of the chief of police, Mr. Lamothe, to arrest, if I could, the persons who had broken into the banks of St. Albans, aforesaid; and it was whilst I was on duty there that I arrested the said Scott. At the time I arrested him he was in the railroad station, and after his arrest I put him in the custody of William Donohue, a sergeant of the government police force of the city of Montreal; but before I made him my prisoner, I asked if he was from Montreal, and he said he was. I then asked him from what part of Montreal; he said that he resided at the head of St. Dominique street; I asked if he knew any person there, and he said he did not. I then asked him if he knew me, and he replied he did not; upon which I called him outside, and told him, that I was a detective officer from Montreal; I then searched him, and found in his possession the sum of two thousand eight hundred and fifty-nine dollars and thirty-one cents, composed of promissory notes of the United States of America (commonly called greenbacks), bank bills issued by different banks in the said United States, gold and silver coin, and one dollar and eighty cents in the postal currency of the said States, and five cents and one penny of Canadian currency which I now produce at this examination. After taking possession of this money, I counted it, and having sealed it in a paper package, I tied it in a pocket handkerchief, and delivered it to Guillaume Lamothe, Esq., chief of police. On Saturday last, the fifth of November instant, I received the said package from the said chief of police, sealed and tied in the manner and form as it was when I delivered it to him. I then opened the said package in the presence of Cyrus Newton Bishop, now present, for the purpose of letting him see its contents with a view to its identity, after which I put my private mark upon it, and again handed it over to the said chief of police, from whom I have this day received it in the same order and condition in which it was when I gave it to him upon the said fifth instant, and it has upon it the private mark of which I have just spoken. At the time I arrested the said Scott, I asked him his name, and he told me it was George Williams: I told him then that I arrested him upon suspicion of his having been one of the persons who had broke into the banks, at St. Albans, aforesaid; he replied that he was a Confederate soldier, and requested our protection. When I accused him of having broken into the banks of St. Albans, he neither admitted or denied having done so. He was dressed in civilian's clothes and appeared to be much fatigued. He had no fire-arms about him, but had a map of Canada. The prisoner, who

now gives his name as George Scott, is the same person whom I arrested in Farnham, and who gave me his name as George Williams, and whom I put into the custody of said sergeant William Donohue.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed.

(Signed) JOHN O'LEARY.

Sworn before me at Montreal, this 7th November, 1864.

CHAS. J. COURSOL, J.S.P.

The following evidence is given upon cross-examination, by Mr. Laflamme, counsel for the prisoners, and in their presence :

The prisoner Scott did not to my knowledge claim any portion of the money taken by me from him as aforesaid as his private property.

The prisoners counsel declare having no further questions to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed.

JOHN O'LEARY.

Sworn, taken, and acknowledged, on the day, month, and year, hereinbefore mentioned, before me.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

The examination of *Roswell Albert Ellis*, of the village of Waterloo, in the County of Shefford, in the District of Bedford, Esquire, Justice of the Peace, now in the city of Montreal, taken on oath this eighth day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said City of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit: —For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and ball and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity

of the said State. The deponent, *Roswell Albert Ellis*, upon his oath deposeth and saith :—About three o'clock on the morning of the twenty-first day of October last past, I was informed that a person suspected of being engaged in the St. Albans raid was stopping at Hall's hotel, at the railroad station, in Waterloo aforesaid ; at about six o'clock on the same morning, I found this person in the railroad cars, having taken passage for Montreal, and I now see him, and recognize him by the name of Dudley Moore, as one of the prisoners here under examination ; I arrested the said Moore and caused him to be taken to Hall's hotel. A short time afterwards, about ten minutes, the money contained in the package which I now have before me, was handed to me by Edward Langley, in presence of Charles S. Martin, a bailiff, who took the said Dudley Moore, and also in presence of David Frost, junior. After receiving the money, I counted it in the presence of these persons, and found that it amounted to nine hundred and fifty dollars, and was contained in ten packages, nine of which contained one hundred dollars each, the other fifty. The said ten packages were tied together with a paper band. I was also handed by either the said Langley or Martin a small wallet, which is now produced, and which I found contained a fifty dollar promissory note, of the said United States of America, commonly called greenbacks ; there was also a ten dollar note issued by the Confederate States. The said nine hundred and fifty dollars, which I received from the said Langley, consists altogether of promissory notes of the United States, commonly called greenbacks. After having, as already stated, counted the said money, I rolled it in a handkerchief, put it up in a paper parcel, sealed it, and delivered it to the said Charles S. Martin ; it is the same parcel which has this moment been placed in my hands by Guillaume Lamothe, Esq., Chief of Police, and I find it in the same order and condition in which it was when I delivered it to the said Charles S. Martin, and containing the amount of money which I counted and put up in the same. Upon the twenty-first day of October last aforesaid, I put the said Dudley Moore into the custody of Charles Hibbard, a bailiff, to be by him conveyed to St. Johns gaol ; but before he left I had a conversation with the said Moore, respecting the said raid ; he stated to me in the course of our conversation that he was engaged in the raid, that he did not go into any of the St. Albans banks, but that he acted as a guard on the outside for those that did go in. At the same time that I received the said sum of money, I also received from the said Langley and Martin three loaded revolvers, which I afterwards returned to the said Martin ; the prisoner was dressed in civilian's clothes. When the prisoner stated to me that he had been on guard outside the bank in St. Albans, I did not hold out

to him any inducement to make such statement, nor did I use any threats; the admission by him was entirely voluntarily.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed.

R. A. ELLIS.

Sworn before me at Montreal, this 8th November, 1864.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the prisoners, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, are asked if they have any questions to put to the deponent, and the following evidence is given in cross-examination in presence of the prisoners, by their counsel, Mr. Abbott:

I arrested the said Moore on verbal information; no information upon oath was made before me; two young men, named Manson and Farmer, gave me information that there was a young man at Hall's hotel that they suspected of being one of the raiders, because he had offered his horse for sale for twenty-five dollars of the United States money. It was upon this information given verbally that I went and arrested the prisoner. I did not search him, but he was searched before I got over to the hotel. I got what was said to be found upon him from Mr. Langley. I got nothing at all from himself. There was a five dollars in gold in the wallet, and I saw a pocket knife, but did not take it in my possession. The wallet I speak of is the one mentioned in my examination-in-chief; I think Martin took the pocket-knife along with the pistol. The five dollars in gold are now in the wallet. The prisoners' counsel, Mr. Abbott, having declared he had no further questions to put to the deponent, this examination is closed.

(Signed), R. A. ELLIS.

Montreal, 8th November, 1864.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

The examination of *George Edwin Fairchild*, of the town of St. Albans, in the State of Vermont, one of the United States of America, merchant's clerk, now in the city of Montreal, taken on oath this 8th day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the Uuited States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit: —For that they, they said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity

of the said State. The deponent, *George Edwin Fairchild*, upon his oath deposeth and saith: I was at St. Albans aforesaid, on the 19th day of October last past; I saw no one shot, and saw no acts of violence by the men in arms. Between the hours of three and four of the clock on that day, I was standing at a distance of about ten or fifteen rods from the said St. Albans bank, when I saw about twenty men armed with revolvers. They were all on horseback, with the exception of two or three, who seemed as if they were looking for horses. One of the party so armed and on horseback approached me, and demanded from Edward Nettleton, who was then in conversation with me, his hat. He demanded it a second time, at the same moment drew two revolvers, when the said Nettleton replied that he could not have his hat. This person who demanded it said he wanted it for one of his party who had lost his hat. Nettleton was next told by the person demanding his hat, that unless he gave it to him damned quick he would shoot him, and then cocked both revolvers, and pointed them at said Nettleton. At this moment he was within six feet of him. Nettleton, seeing the revolvers cocked, put his hand under his coat as if with the intention of drawing an arm therefrom. Upon seeing this, the gentleman on horseback asked first if he had any arms, and also to show him the inside of his coat, remarking at the same time that if he did not he would shoot him through. My further examination is continued till to-morrow morning at ten o'clock, and I have signed

GEORGE E. FAIRCHILD.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place aboved mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

On the 9th day of November, in the year of our Lord one thousand eight hundred and sixty-four, the deponent above named reappear before me, the undersigned Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, and being resworn, deposeth and saith: I then told Nettleton not to stand an insult. At this the man on horseback pointed his revolvers at me, and asked me if I had any arms with me. I told him I had none; and I hoped he would not shoot an unprotected person. At this moment another of the party, the one who needed the hat, rode up and presented two revolvers at the said Nettleton, telling the other person on horseback not to parley, but to shoot the damned cuss. At this time there was a cry for help from one of their party, upon which the two persons referred to rode off in the

direction where help was called for. I now recognize and point out as having been among the army party, I saw at St. Albans aforesaid, on the said 19th day of October last, five of the prisoners now under examination, who give their names as Bennett H. Young, Charles Moore Swager, Joseph McGrorty, Caleb McDowall Wallace, and George Scott. These five persons I saw on horseback, armed each with two revolvers. The two first persons to whom I have referred, and who presented revolvers at said Nettleton and myself, were and still are unknown to me. One of these two persons was called the Captain. After he had left Nettleton and myself, I next saw him at about two rods from the St. Albans bank, where nearly the whole party had assembled, numbering from fifteen to twenty. They were all on horseback, armed with revolvers. I then heard the person called Captain call upon them to form line, which they did, but not very regularly.

After having done so, the five prisoners whom I have pointed out and identified fired several shots at the citizens. At the time the line of which I have spoken was being formed, I saw Captain Conger, a citizen of St. Albans, approaching this party of armed men, with a gun in his hand, followed by a few other citizens of the place. He apparently was trying to fire a gun at them, but could not get it off. It was then nearly four o'clock in the afternoon. After the armed party, amongst whom were the said five prisoners identified by me, had fired two or three rounds each, their horses became unmanageable and they headed off in different directions. At the moment I saw one of the party, and the only one, on foot. The person called Captain, seeing this man without a horse, rode up to Fuller's livery stable and ordered Mr. Fuller's saddler to lead a horse that was then standing there to the said person belonging to his party who had not, as yet, got one. The saddler did as he was ordered and led the horse called for and gave him to the said person whom I have spoken of as having been on foot. The so-called Captain accompanied the saddler from the livery stable, keeping the revolver pointed at him until the said horse was given up. After this occurrence, there was a considerable confusion in the street, created by the said armed party and the citizens. Shots were fired in different directions by this armed party. After this, I saw the said armed party riding off from the said town of St. Albans. They were the same party I saw at the said St. Albans bank. They acted in concert with each other from the beginning to the end. They were all dressed in civilian's clothes. I know that the St. Albans bank aforesaid is a banking institution, doing business at St. Albans aforesaid.

The conduct of the said armed party at the said St. Albans bank, and elsewhere in the said town of St. Albans, was such as to put the citizens in fear of their lives. I know that they put me in fear

of losing my life. All the circumstances hereinbefore detailed by me took place at St. Albans aforesaid, between the hours of three and four of the clock on the said 19th day of October last past aforesaid. When I said that I saw no act of violence committed, I meant that I saw none actually shot or wounded.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed

GEORGE E. FAIRCHILD.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place herein before mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence of the prisoners, they are asked if they have questions to put to the deponent, and they declare by their counsel, Mr. Kerr, that they have, and the following evidence is taken in cross-examination.

I did not see townspeople fire upon the party. Captain Conger was the only man I saw.

The prisoners counsel declare having no further questions to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed

GEORGE E. FAIRCHILD.

Sworn, taken, and acknowledged, on the day, month, year, and at the place above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

The examination of *Edmund Conant Knight*, of the township of Stanbridge, in the District of Bedford, bailiff, now in the city of Montreal, taken on oath this ninth day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamander Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty,

Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent *Edward Conant Knight*, upon his oath deposeth and saith: At about three o'clock in the morning of the twentieth day of October last past, I arrested two of the prisoners, Spurr and Bruce, at Elder's hotel in Stanbridge. They were in bed. I went to the door of the room where they were, and I found it bolted. Martin Rice, of Stanbridge, was with me, also one Cross, C. W. Martindale, and Irwin Briggs. There were others present, but those were all that I called to assist me. Mr. Whitman and Mr. Blynn, magistrates, were also present. I and my party entered the room, and the magistrates came afterwards. I immediately jumped into the bed where the prisoners were, and told them they were prisoners. They asked me why they were arrested. I told them it was for robbing the St. Albans banks. They asked me if I was a British officer, and I said I was a bailiff. I handcuffed

them. I searched to see if I could find any arms, and I found four revolvers between the feather-bed and straw-bed, and in the same place a large quantity of bank-bills. I took the revolvers, and handed them to Mr. Whitman, the magistrate, and also some of the bank-bills; the balance of the money I think was given by Martindale to Mr. Whitman. Mr. Whitman took away the money and the revolvers. I put the prisoners in charge of C. H. Barker and Irwin Briggs. I did not identify the money that I took. After conversation with Mr. Whitman, I went back and searched the prisoners further, and found in their possession four hundred and twenty-seven dollars and thirty-five cents in bank notes, scrips, gold and silver. This money I gave to Guillaume Lamothe, Esq., chief of police, on the twenty-fifth of October last. On the twentieth of October last, the prisoner now calling himself Bruce, I understood to call himself at that time Bennett, and the other one called himself Bruce. The prisoners on the same day stated in my presence that the money which had been found in their possession they had got from the bank in St. Albans. I saw at Stanbridge, on the same day, the prisoners Collins and Lackey, and on the next day the prisoners McGrorty and Doty. These last two were arrested in a barn in Dunham: in the possession of McGrorty and Doty, bank-bills of different kinds, some gold and silver, and some bonds, were found. The prisoners, Spurr and Bruce, stated on the twentieth of October last that they had come from Burlington, Vermont, the previous morning, in a buggy to St. Albans. At the time the prisoners I have referred to, made the several statements that I have mentioned, no threats were made use of, nor inducements held out to procure such statements, which were voluntary on their part.

The foregoing deposition having been read in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed

E. C. KNIGHT.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

And on this day, the 10th of November, in the year of our Lord one thousand eight hundred and sixty-four the deponent above named, reappeared before the undersigned Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace, in and for the city of Montreal, being re-sworn in the presence of the prisoners so charged, the foregoing deposition is then and there read to the said deponent, who declares upon oath that the same contains the truth; and

thereupon the said prisoners are asked whether they have any questions to put to the said deponent, and they having answered that they had, the following evidence is taken in cross-examination by Mr. Abbott, the prisoners' counsel: I arrested the said prisoners without any warrant at all. I had no authority for arresting them, but the people of the village told me that a robbery had been committed at the St. Albans banks, and that they were afraid that they were going to rob the Stanbridge bank. I am not aware of any information on oath having been laid against these men. When I told them I was a British officer, they said it was all right. They did not say anything else at that time; but four or five hours afterwards they told me they were Confederate soldiers. I did not count the money I took from them in the first instance. I did not examine it sufficiently to ascertain the amount, but I should suppose there were several thousand dollars. When they told me they had got the money from the St. Albans banks, they also told me that they had got it on a raid, which they had made upon St. Albans, upon the authority of the Confederate government, and that it would be shown as such. It was about this time also that they told me that they were Confederate soldiers. They were asked if they were Jeff. Davis' boys, and they said they were. These matters, and the statements where they had got the money, all came out in the same conversation.

The prisoners' counsel declares that they have no further question to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed

E. C. KNIGHT.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place before mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

The examination of *George Roberts*, of the town of St. Albans, in the State of Vermont, one of the United States of America, clerk, now in the city of Montreal, taken on oath this ninth day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey,

Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty hetween Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and vlolently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *George Roberts*, on his oath deposeth and saith: I have been clerk in the American House in St. Albans aforesaid, since March last. I recognize two of the prisoners, namely, Young and Doty, having seen them in St. Albans prior to the nineteenth day of October last past. I saw Young there, I think twice before that day; but I am not sure if it was more than once. I saw him certainly once in the American House during the month prior to the nineteenth of October last. About two o'clock in the afternoon of the last mentioned day, I saw in front of the National bank, a man named Blaisdale, of St. Albans, having a disturbance with the prisoner, whom I now recognize,

calling himself Caleb McDowall Wallace. They were struggling together in front of the said bank. Blaisdale had hold of Wallace, when I first saw them. Wallace was then armed with two revolvers. While this was going on, I saw two other persons near by armed the same way, one of whom I heard saying to Wallace "shoot him." Wallace, and the other armed person, took Blaisdale to the park in front of the American House. When I saw what I have related, I was standing on the veranda of the American House. The prisoner, Young, came from the direction of the First National bank in front of the American House, on the veranda of which myself and eight or nine others were standing. Young presented two revolvers at the persons on the veranda, and said "that he was an officer in the Confederate service; that he was sent there to take that town, and that he was going to do it, and that the first man that offered resistance he would shoot him." Then the prisoner, Bruce, whom I saw for the first time, near by, appeared armed with two revolvers. Bruce ordered the party on the veranda to go over to the park, which they did; he, Bruce, following them. I went with the others to the park. When I left the American House, or very soon after, Young started towards the northern part of the town. Bruce stayed at the park, and acted as guard, I should think, for about ten minutes, and then called upon Young, addressing him as Colonel, for assistance. The prisoner, Doty, then came on horseback from the yard of the American House. About the same time I saw some twelve other persons, some of them with horses, coming from the yard of the American House, among whom I recognize the prisoner, Charles Moore Swager. These persons were armed with revolvers, most of them, I think, having two each. They began to stop what teams there were in the street, taking the horses belonging to the teams. Whilst I was in the park, I saw four or five persons armed with revolvers, standing on the steps of the Franklin County bank, which is near the American House, but I do not recognize any of those persons now. Some ten minutes after, we crossed to the park, or perhaps less. I saw the prisoner, Young, at the north end of the veranda of the American House shoot one Collins H. Huntingdon with a revolver, wounding him. Huntingdon then went into the park. A short time after this, all the persons I have referred to, armed as aforesaid, started off together, most of them on horseback, towards the north end of the town. They all seemed to know each other, and acting in concert. I do not recognize any of the prisoners, except those I have named. I heard several shots fired at the upper end of the town. Upon every occasion when I saw Young, Swager, Wallace, Bruce, and Doty, at St. Albans, as I have mentioned, they were

dressed in ordinary civilian's clothes. I saw nothing either in demeanor or dress to indicate that they had or claimed any military character whatever. On the afternoon of the nineteenth of October last past, the occurrences I have spoken of did not look like a military expedition. I thought the armed persons were a mob. On the nineteenth of October last, the prisoner, Swager, was known by the name of Jones, prior to the outbreak mentioned.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares that the same contains the truth, and hath signed.

GEORGE W. ROBERTS.

Sworn, taken, and acknowledged, before me, on the day, year, and month, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made, and read in the presence of the said prisoners, they are asked if they have any questions to put to the deponent, and that having declared by Mr. Kerr, their counsel, that they had, the following evidence is taken on cross-examination: When I saw Blaisdale and Wallace, they were both standing up. Blaisdale had hold of him somewhere about the neck. I was about twenty yards from Young when he shot Huntingdon. They apparently were talking together previous to the shot being fired. Huntingdon was moving on at the time he was shot. I should judge from Young's action that he wanted Huntingdon to go across in the park where we were. I saw ten or twelve men near the American House belonging to the band, and there were some others further up the street. Young appeared to be the leader, and have charge of them at that part of the town. They appeared to act together, but I saw no plan of action. I never saw a mob in St. Albans armed the way they were, with one of their members proclaiming himself an officer in the Confederate service. I have never seen any of the Confederate troops. I have never seen Confederate troops in active service. When Young came to the veranda of the American House he said, "Gentleman, I am an officer in the Confederate "service, I have been sent here to take this town, and I am going "to do it; the first that offers resistance I will shoot him." St. Albans has been a recruiting post for the American army before now.

The prisoners' counsel declares having no further questions to put to the deponent, and this deposition having been read in the

presence of the said prisoners, the deponent declare it contains the truth, and hath signed

GEO. W. ROBERTS.

Sworn, taken, and acknomledged, before me, on the day, year, and month, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

Examination of *John McLoughlin*, of the city of Montreal, in the District of Montreal, chief constable of the Government Police, taken on oath this tenth day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed, within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the United

States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *John McLoughlin*, on his oath deposeth and saith: On the 20th of October last, I received orders to proceed to St. Johns and from thence to Farnham, in pursuit of such persons as might be found thereabouts, or elsewhere, who had sought refuge in Canada, after having been engaged in the St. Albans raid. In accordance with my instructions I proceeded there, accompanied by Mr. Sowles, cashier of the First National bank, at St. Albans, and Detective John O'Leary. Upon the afternoon of the said 20th day of October last, a prisoner, whom I now recognize and identify as George Scott, and now under examination, was arrested by said John O'Leary at the railroad station in Farnham, in the District of Iberville. I was present at his arrest and at his search, which took place immediately after his said arrest. Upon his person were found two thousand eight hundred and fifty-nine dollars and thirty-one cents, which was taken charge of by said O'Leary; and which during his examination as a witness in this matter, at which I was present, he produced and identified as the same money which he took from Scott. After he had been arrested, and the money taken from him, he stated he was a Confederate soldier, and claimed protection as such. He was dressed in civilian's clothes, and looked very much fatigued. He had no fire-arm with him. On the following morning, the 21st October last aforesaid, at the hour of seven of the clock, I arrested in the same place where said Scott was taken another person, who gave me his name as Samuel Gregg, whom I now point out and identify among the prisoners here under examination under the name of Samuel Simpson Gregg. After having arrested him he told me he was going to Montreal, and from there to Quebec, where he had some friends. He also said that he came from Kentucky. I then searched his person, and found upon him thirty-one dollars and eighty-one cents; consisting of one twenty dollar gold piece, one five dollar gold piece and three one dollar bills upon banks in Canada, and one dollar bill of the Windsor County bank, one dollar and thirty cents in silver, and one dollar and forty-five cents in the postal currency of the United States, and six cents in coppers. He had no other money about him. These sums of money I now produce. They have

remained in my possession ever since. I also found upon his person nine photographs. At the time I made the search, Albert Sowles, who has also been examined as a witness touching the subject matter of this investigation, was present, and, upon seeing the photograph upon the back of which is pencilled the name Caleb McDowall Wallace, and one of these taken by me from the said Gregg, he immediately said, "That is the likeness of the man who presented a revolver at me, in the bank, whilst the others were robbing it." I now see under examination the said Wallace, and I believe the photograph, upon which his name is pencilled, is a correct likeness. He did not make any particular remarks about any of the other photographs, but I recognize in another of them, upon the back of which is pencilled the name of James Johnson, the likeness of the prisoner Thomas Bronsdon Collins, now also under examination. At the time I took possession of those photographs, I asked the said Gregg whose likenesses they were, and I put upon the back of each the name which he gave me. He, the said Gregg, was dressed in civilian's clothes, and was suffering from a sprain of the ankle. I had no further conversation with the prisoner; I know no more of him or about him. The foregoing deposition having been read in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed JOHN McLOUGHLIN.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the prisoners so charged, they are asked if they have any questions to put to the witness or deponent, and they having declared they had, by their counsel, Mr. Kerr, the following evidence is taken on cross-examination:

There were also seven other photographs taken at the same time from Gregg, among which was the likeness of a lady. I arrested Gregg under my own responsibility. I had no warrant.

The prisoners' counsel declared having no further questions to put to the deponent; and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed JOHN McLOUGHLIN.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the time, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

Examination of *James Russell Armington*, of the town of St. Albans, in the State of Vermont, one of the United States of America, merchant, now in the city of Montreal, taken on oath this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, in the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed, within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and

provided, and against the peace and dignity of the said State. The deponent, *James Russell Armington*, on his oath deposeth and saith: On the afternoon of the 19th day of October last, I was at St. Albans aforesaid. Between the hours of three and four of the clock in the afternoon of that day, I saw armed men in St. Albans. I recognize the prisoners, Young, Doty, and Gregg, having seen them in St. Albans on that day. I saw them first on the street. They were on horseback, and were armed with pistols. They were in civilians' dress. I should judge they belonged to one party. They rode off together towards the north. They did not go off very rapidly. I should judge that they were about twenty of these armed men in all. They appeared to be strangers, and appeared to be acting in concert. I bought some gold of a stranger in the bank whom I afterwards learned from M. W. Bairdsley, cashier of the bank, was one of the party. I heard shots fired by the party that rode off together, as I have mentioned. The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares that the same contains the truth, and hath signed

J. RUSSELL ARMINGTON.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentoned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing depositian having been made and read in the presence and hearing of the said prisoners, they are asked if they have any questsons to put to the deponent; and they having declared, by Mr. Kerr, their counsel, that they had, the following evidence is taken in cross-examination:

I saw shots fired by the party, and I saw shots fired at the party by people of St. Albans. This firing took place a little above the St. Albans bank. I should judge that Gregg had little more whiskers on; that is the only difference I see in his face.

The prisoners' counsel declares having no further questions to put to the deponent; and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed

J. RUSSELL ARMINGTON.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal.

POLICE COURT.

The examination of *Marcus Wells Beardsley*, of the town of St. Albans, in the State of Vermont, one of the United States of America, now in the city of Montreal, taken on oath this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed, within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and

provided, and against the peace and dignity of the said State. The deponent, *Marcus Wells Beardsley*, on his oath saith: On the nineteenth day of October last past, I resided at St. Albans, and was and still am the cashier of the Franklin County bank. On that day, in the afternoon, there was an outbreak in the village, and a number of armed men appeared there; those that I saw were strangers. When I first saw some of these men I was in the said bank. The men I saw belonging to this armed gang, were armed with large revolvers. I recognize the prisoner, Hutchinson, as one of the armed gang that entered the said Franklin County bank. He wore whiskers then, which he has not now, and he had no spectacles on then as he has now. All I can state as to what took place outside of the Franklin County bank, I know by report only. Hutchinson, when he first came into the bank, enquired from me what we were paying for gold. I answered that we were not dealing in such article, and referred him to a Mr. Armington, a merchant of the village. There were four or five of the said armed gang that entered the Franklin County bank, but I only recognize Hutchinson, who seemed to be their leader. These men were all armed with revolvers. They remained in the bank, I should think, ten or fifteen minutes. All these men presented revolvers, and threatened my life, but no revolver was discharged. These men were all dressed in ordinary civilians' clothes. I saw none of these men afterwards in St. Albans. I next saw Hutchinson in the Montreal gaol. I remarked to Hutchinson and to Mr. Saxe, both being present at the gaol, that I thought I had received very brutal treatment at the bank at St. Albans, at the hands of the leader of the gang. Hutchinson then remarked that the people of the North were treating the people of the South in the same manner. The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares it contains the truth, and hath signed

M. W. BEARDSLEY.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made in the presence and hearing of the prisoners so charged, they are asked if they have any questions to put to the deponent; and they having declared, by their counsel, that they had, the following evidence is taken on cross-examination:

The person I have identified on that day wore whiskers as I

have already said, and a small wool or fur hat with a narrow brim. He had a dark colored coat on, but I cannot say whether it was black or blue. It was rather ample in size. He had full whiskers extending round upon his chin, and a little upon his chin, I think. I am not sure if he had a moustache or not. I cannot say if the upper part of his chin was shaved or not. My motive in speaking to him at the gaol as I did, was that I felt sure that he was the man that had committed the act, and I felt disposed to tell him so. It was probably not necessary to tell him that it was a brutal act; but I felt disposed to say what I did, and I said it. I said it to him in the ward of the gaol where he was confined. I was admitted there by a man I supposed to be the gaoler. I think he was standing very near when I said this to the prisoner; that is my impression. My friend, Mr. Saxe, was beside me too. I was not at all concerned for my personal safety for what I said there.

On question by the Judge.—I had never seen Hutchinson before to my knowledge. The prisoners' counsel declares having no further questions to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed

M. W. BEARDSLEY.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

The examination of *Charles Alexander Marvin*, of the town of St. Albans, in the State of Vermont, one of the United States of America, merchant's clerk, now in the city of Montreal, taken on oath this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her

Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *Charles Alexander Marvin*, upon his oath deposeth and saith: I was in St. Albans aforesaid, on the nineteenth day of October last in the afternoon. I was standing on the step of my brother's store on Main street, at about a quarter past three o'clock in the afternoon of that day. The first person I saw was the prisoner, Doty, on a black horse. I did not see that he had any arms. I saw about ten armed men there that afternoon. They were on horseback. They were all armed alike with revolvers. I saw among this armed party the prisoners, Young, Doty, and Teavis. The prisoner, Teavis, was armed and on horseback also. The armed party all rode off together on horseback about twenty minutes after I first saw them; they seemed to be in great haste, and appeared all to act in concert together, and as one party. I heard a number of shots fired by this party. I saw the prisoner, Dudley Moore, at Waterloo, in the District of Bedford, on the Friday following the nineteenth of October last. I

merely asked him one direct question, "When you were at Shel- "don Creek on the opposite side of the street, where was our pur- "suing party?" and he answered, "Coming into sight on the opposite "side of the Creek." Sheldon's Creek is about ten miles north of St. Albans. When I said "Where was our pursuing party?" I referred to a party of St. Albans people pursuing the armed party I have spoken of. The armed party that I have spoken of were all strangers to me. They were dressed in civilians' clothes, most of them differing from each other. The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares the same contains the truth, and hath signed

CHARLES A. MARVIN.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the said prisoners, they are asked if they have any questions to put to the deponent; and they having declared, by Mr. Kerr, their counsel, that they had, the following evidence is taken on cross-examination:

I saw one man trying to fire upon the armed party. The prisoners' counsel declares having no further questions to put to the deponent; and this deposition having been read in the presence of the said prisoners, the deponent declares it to contain the truth, and hath signed

CHAS. A. MARVIN.

Sworn, taken, and acknowledged before me, on the day, month, and year, and at the place, hereinbefore mentioned.

CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

The examination of *Henry George Edson*, Esquire, of the town of St. Albans, in the State of Vermont, one of the United States of America, Counsellor-at-law, now in the city of Montreal, taken on oath this tenth day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the

Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear, and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person, and custody, and possesion, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *Henry George Edson*, upon his oath deposeth and saith: I have practised law in the village of St. Albans, since the year 1844. The population of the village is between two and three thousand. It covers an area of about one mile square. There are between two and three hundred houses in the village. The first National bank, the American House, and the St. Alban's bank, are situated in the Main street, and in a central part of the village, and are not very far apart from each other. The Franklin County bank

is on the same street, and about midway between the First National bank and the St. Albans bank. I am acquainted with the laws of Vermont, and state that the volume now produced contains the general statutes in force in Vermont; and I say that the sections 22, 24, and 26, chapter 112 of said statutes, and sections 86 and 87 of chapter 15, and sections 1, 6, and 9 of chapter 31 of the said statutes, were on and prior to the nineteenth day of October last, and are now in force in the State of Vermont, and form part of its general laws. I am acquainted with the seal of said State, and the signatures of the governor and secretary of state. The seal affixed to the certificate written upon the leaf between page 790 and the first page of the index of said volume, is the seal of the said State. The signature J. Gregory Smith, subscribed to the said certificate, and the signature G. W. Bailey, jun., also thereto subscribed, are respectively the signatures of the governor and secretary of state of the said State of Vermont. I also say that the seal affixed to the certificate upon the last page of the copies of complaint and warrant made and issued in Vermont, and produced and filed yesterday is the seal of the said State, and the said signature of J. Gregory Smith, and G. W. Bailey, jun., thereto subscribed, are respectively the signatures of the Governor and Secretary of State of the said State. I know that robbery is a crime by the laws of the State of Vermont. I am one of the legal advisers of the St. Albans bank. I know that this bank has been carrying on business as banking corporation at St. Albans, under the laws of Vermont for several years past, and was so carrying on business on the nineteenth day of October last. I compared the copies of complaint and warrant before referred to, with the original complaint and warrant made and issued at St. Albans, in the State of Vermont, and declare them to be true and exact copies of the said originals respectively, and they are in the form prescribed by the laws of the said State of Vermont. The crime disclosed in the said complaint, and also in the commencement of this my examination, is the crime of robbery according to the laws of the State of Vermont, and according to the laws of the United States of America. According to the laws of the State of Vermont, the duty of the town grand juror is to lodge complaint before justices of the peace, that is to say, within the town to which he is elected. I know that Mr. Chellis F. Safford, who lodged the complaint referred to, was on the nineteenth and twentieth days of October last, a grand juror, within the said town of St. Albans. No depositions are taken according to the laws of Vermont, prior to the issuing of a warrant, but the warrant is issued upon the information of the grand juror. By the laws of Vermont, upon the last mentioned days, a justice of the peace had

authority and jurisdiction to receive complaints such as I have spoken of within the county for which they are appointed, and also to issue warrants of apprehension in the form I have before spoken of upon which prisoners if arrested would be held for examination. This my examination is continued till to-morrow morning at ten o'clock, and I have signed H. G. EDSON.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.
(Signed) CHAS. J. COURSOL, J.S.P.

On this day, the 11th day of November, in the year of our Lord 1864, the deponent, Henry George Edson, before named, reappears before me the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace, in and for the city of Montreal, and being re-sworn in the presence of the prisoners so charged, deposeth and saith,—The three documents now produced, purporting to be respectively "An Act to incorporate the Presi-"dent, Directors, and Company of the Bank of St. Albans;" "An Act to extend the time and continuing in force for a "limited period an Act to incorporate the President, Direc-"tors, and Company of the Bank of St. Albans;" and "An Act "to extend the Charter and increase the capital stock of the Bank "of St. Albans," are copies of the several acts of the Legislature of the State of Vermont, incorporating and relating to the St. Albans bank; the seal affixed to the certificates appended to the said copies respectively, is the seal of the said State of Vermont, and the signatures J. Gregory Smith, and G. W. Bailey, jun., subscribed to the said certificates respectively, are the signatures of the governor and secretary of state of the said State respectively. The acts of which those documents are copies, were in force in the State of Vermont on the nineteenth day of October last, and still are so; and the bank was on that day, and still is organized and carrying on business, at St. Albans, in the State of Vermont, under the said Acts. The village and town of St. Albans before referred to, are within the jurisdiction of the United States of America, and are situated in the State of Vermont, one of the United States of America.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares the same to contain the truth, and hath signed H. G. EDSON.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.
(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the prisoners above named, they are asked if they have any questions to put to the deponent; and they having declared by their counsel, Mr. Kerr, that they had, the following evidence is taken in cross-examination:

I think that a family resides in a part of the building in which the St. Albans bank is carrying on business and where it carried on business on the nineteenth of October last. I compared copies of the complaint and warrant made and issued in the State of Vermont, and filed in these proceedings. I cannot state when I so compared the said charge and complaint with the original thereof. The said copies of complaint and warrant are in the handwriting of a man by the name of Taylor, of St. Albans. I do not recognize the handwriting in which the name William H. Hutchinson in the warrant and in the complaint appears. The name William H. Hutchinson appeared in the original warrant and complaint when I compared it with the copies. It is usual in our legal proceedings before magistrates to interpolate words in the same way that the words "William H. Hutchinson" are in the copies of complaint and warrant now produced, and such alterations are not made in the margin. I can practise before any Circuit and District Court of the United States sitting in the State of Vermont. I have never been admitted to practise before the Superior Court sitting at Washington. The United States Statutes at Large published by Little & Brown at Boston, are received as authentic in all the Courts of the United States, without any further proof of their authenticity. I cannot say how many volumes there are; I think about eleven. I am acquainted with the law of the United States upon the subject of treason, as most lawyers are, from general reading. The definition of treason against the United States would be the levying of war against them, or adhering to their enemies, or giving them aid or comfort within the United States or elsewhere, by any person owing allegiance to the United States. I am not prepared to swear that the United States subjects residing in the Confederate States, and who have taken up arms against them, are guilty of treason; I leave that to the judicial tribunals of the country to decide. I have heard of an Act of the Congress of the United States of the nineteenth of June, one thousand eight hundred and fifty-two, commonly called the "Confiscation Act;" I have read that Act. I know that a civil war has been raging between the United States and the so-called Confederate States for the last three years.

The prisoners' counsel declares having no further questions to put to the deponent, and this deposition having been read in the

presence of the said prisoners, the deponent declares it contains the truth, and hath signed

H. G. EDSON.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.* POLICE COURT.

The examination of *James Saxe*, of the town of St. Albans, in the State of Vermont, one of the United States of America, merchant, now in the city of Montreal, taken on oath this 11th day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed, within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of

the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *James Saxe*, upon his oath saith: I was in St. Albans aforesaid, on the nineteenth day of October last past, in the afternoon. I think on that afternoon I saw about fifteen men on horseback; some of them were armed with revolvers, but how many I could not say. They all appeared to act in concert together. The prisoner Hutchinson, whom I now recognize, was one of the armed party at St. Albans, in that afternoon. I notice a little absence of whiskers, and he had no spectacles on at that time as he has now. I saw Hutchinson for the first time in that afternoon, in the Franklin County bank. There was something said in my presence in regard of the price of gold. Mr. Bairdsley, the cashier of the bank, handed me the Boston Journal, and asked me to read the money article. I did so. So far as I could see, Hutchinson was unarmed at that time. I am not positive that I saw him individually in the crowd of armed men on horseback. Hutchinson was in civilian's dress, and so also were the others. The armed men I have spoken of left the town in a northerly direction, and went off in a body.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares that the same contains the truth, and hath signed

JAMES SAXE.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence of the said prisoners, they are asked if they have any questions to put to the deponent; and having declared by Mr. Kerr, their counsel, that they had, the following evidence is taken in cross-examination: My impression is, that he Hutchinson had a moustache. I think his beard went pretty much round his face, but I am not positive; I have a strong impression. He was at about six or eight feet from me. He was nearly facing me. My impres-

sion is, that he had on a black round crown felt hat. It was then about half-past three, or a quarter to four o'clock. It was not a very bright day. There was a good light in the room. The windows are in front. He stood with his back in the light. I cannot be positive that I saw him after he left the bank. The first time I saw him afterwards, was at the gaol,—when I asked the gaoler to point out the man who called himself Hutchinson. All the other prisoners were present. I took a general view of the prisoners, passing among them, and I could not see him; and it was then that I asked the gaoler to point him out. The first time I saw the prisoner, after seeing him in St. Albans, was in the police office. I never saw the prisoner Hutchinson threaten any person or commit any violence. I am not aware that I saw him in the crowd of armed men.

The prisoners' counsel declares having no further questions to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed JAMES SAXE.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

By permission of the Court, on application of the counsel for the prosecution, the deponent, James Saxe, reappears before me the undersigned, and states: I asked the gaoler if he would call Mr. Hutchinson, who was then out of sight. I did so for the benefit of Mr. Bairdsley, as Mr. Bairdsley had not seen him since he was a prisoner. This is the only correction I have to make in my deposition.

On cross-examination by permission of the Court: The prisoner came from the farther end of a very long room, where the greatest number of prisoners were. The room seemed to be one hundred feet long, and I had then walked about twenty feet in that room. There were other persons in the room and at the end of the room. I could not see distinctly at that distance.

The prisoners' counsel having declared that he had no further questions to put to the deponent, this examination is closed, and I have signed JAMES SAXE.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, } POLICE COURT.
District of Montreal. }

The examination of *Leonard Leandre Cross*, of the town of St. Albans, in the State of Vermont, one of the United States of America, photographist, now in the city of Montreal, taken on oath this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:

For that they, the said Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and ball and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State

of Vermont, in such case made and provided, and against the peace and dignity of the said State. The deponent, *Leonard Leandre Cross*, upon his oath deposeth and saith: I was in the village of St. Albans on the nineteenth day of October last, in the afternoon. I saw a party of armed men there that afternoon; I should think between twenty and thirty in number. This was between three and four o'clock in the afternoon. They were on horseback, and in the street of the village. They were armed with revolvers, and dressed in ordinary civilians' clothes. I saw there on that afternoon, forming part of the armed party I have spoken of, the prisoners Young, Bruce, Spurr, Lackey, and Collins, all of whom I now identify. They were all armed with revolvers, and were on horseback. The party appeared to be acting in concert, and they rode off together; and shortly after I saw them on the street they seemed to be in a hurry to get away. The prisoner Young shot at me with a revolver. I saw the party shooting, and I stepped out of my photograph saloon, and said to one of the party "What are you trying to celebrate here?" Young answered, "I'll let you know," and fired his revolver at me. He then said "Come out; let every one of you walk out into the street." Young then ordered Lackey to throw Greek fire into Mr. Atwood's building. Lackey threw a bottle, or something made of glass, against the sign over the door of the building. Young said then, "Boys march up the street, there is too great a crowd gathering round here." He started off, and fired again at me, or at all events the ball passed near me. This was the same party that committed several acts of violence in the village that afternoon. They were strangers, with the exception of Young, whom I had seen there before.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares that the same contains the truth, and hath signed

LEONARD L. CROSS.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence of the said prisoners, they are asked if they have any questions to put to the deponent, and that having declared by Mr. Kerr, their counsel, that they had, and the following evidence is taken in cross-examination:

I went to Stanbridge. I helped to arrest two of the prisoners

at Stanbridge. I saw them handcuffed. I was armed when I was in Stanbridge, having a revolver. I do not remember threatening to shoot any of the prisoners in Stanbridge. I had my pistol in my hand when I went into the room where the prisoners were. They were not handcuffed at that time. I might have said that if the man who had shot at me would give me the same chance I would shoot him. I only saw at St. Albans one man who, after they had ridden up the street, snapped a rifle at them. It was a man of the name of Gilson.

The prisoners' counsel declares having no further question to put to the deponent, and this deposition having been read in the presence of the said prisoners, the deponent declares it contains the truth, and hath signed

LEONARD L. CROSS.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

CHAS J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal.*

POLICE COURT.

The examination of *Daniel Greenleaf Thompson*, of the town of Montpelier, in the State of Vermont, one of the United States of America, clerk, now in the city of Montreal, taken on oath this 12th day of November, in the year of our Lord one thousand eight hundred and sixty-four, at the Police Office in the Court-house, in the city of Montreal, in the District of Montreal aforesaid, before the undersigned Judge of the Sessions of the Peace in and for the said city of Montreal, in the presence and hearing of Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaints made under oath before me under the provisions of the Treaty between Her Majesty the Queen, and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen, and the United States of America, to wit:—For that they, the said Samuel Eugene Lackey, Squire Turner

Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, one of the United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault and him the said Cyrus Newton Bishop in bodily fear and in danger of his life, then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person and custody, and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the

The deponent, *Daniel Greenleaf Thompson*, upon his oath deposeth and saith: I have compared the documents produced and filed in this case, purporting to be copies of three Acts of the Legislature of Vermont incorporating and relating to St. Albans bank, with the original Acts on file in the office of the secretary of state of the said State of Vermont, in which office I am a clerk, and declare the said documents to be true and exact copies of the said original Acts respectively. The seal affixed to each certificate appended to the said copies, is the seal of the said State of Vermont; and the signatures, J. Gregory Smith, and G. W. Bailey, jun., subscribed to the said certificates, are the respective signatures of the governor and secretary of state of the said State.

The foregoing deposition having been read over in the presence of the prisoners so charged, the deponent declares that the same contains the truth, and signed

DANIEL G. THOMPSON.

Sworn, taken, and acknowledged, before me, on the day, month, and year, and at the place hereinbefore mentioned.

CHAS. J. COURSOL, J.S.P.

The foregoing deposition having been made and read in the presence and hearing of the said prisoners, they are asked if they have any questions to put to the deponent, and that having declared by Mr. Kerr, their counsel, that they had none, this examination is closed.

Montreal, 12th November, 1864.

DANIEL G. THOMPSON.

CHAS. J. COURSOL, J.S.P.

Mr. Johnson said he understood there was no further evidence to adduce, for the prosecution, as to the charge of robbery of the St. Albans bank. Having closed the evidence in this part of the case, he believed the defence should be called upon to state what they intended to do. At any rate, as in other cases, the depositions should be read to the prisoners to see if they had anything to say in reply.

Judge Coursol said he had desired to hear the wish of the counsel for the Crown in the matter; and as they thought it advisable that the voluntary examinations should be taken at this stage, such should be done.

Hon. Mr. Abbott hoped that the Judge would not consider it sufficient to have the opinion of the counsel for the Crown, on any question that might arise in the case. And he submitted that at least the form of hearing the prisoners' counsel should be observed.

After some further remarks, at the request of Mr. Devlin, Judge Coursol suspended proceedings for five minutes to allow the counsel for the Crown and for the prosecution to consult together.

Mr. Devlin, on returning into Court, asked whether any evidence would be produced on the other side. The prosecution intended adducing nothing further.

Judge Coursol.—Then the case is closed, and we must take the voluntary examinations.

Mr. Devlin understood that no further evidence could be adduced after the voluntary examinations. If that were to be the understanding, the counsel for the prosecution were prepared to proceed with the voluntary examinations.

Judge Coursol.—The law is very clear on this point. It says that when the examination for the prosecution is closed, the voluntary statement must be taken, after which the magistrate calls upon the accused to go upon their defence.

Mr. Devlin.—Under our statutes the voluntary statement is the last proceeding.

Judge Coursol.—Will you shew me that?

After some further discussion,

Judge Coursol asked what objection they had to the voluntary statement.

Mr. Devlin answered they had none, but contended that the time had not yet arrived for the taking of it, unless His Honor decided that the case was finally closed, and that after this voluntary statement, no further testimony would be permitted.

Judge Coursol said that the English course of practice was, under existing circumstances, the safest one to follow, and, as laid down in "Saunders on Summary Convictions," would guide his course in this case.

Mr. Devlin said one of the reasons for wishing to defer the voluntary examinations until they ascertained whether His Honor would permit the adduction of further evidence, was their belief that they had a right now to call on the counsel for the defence to make any application they liked.

Judge Coursol.—I rule that, before the prisoners are called upon to give answers at all, or before the question as to adducing further evidence is settled, the voluntary examinations be taken. It must be understood that I have never expressed any opinion as to whether the voluntary examinations are requisite or not; but that I order them to be taken because the counsel for the Crown have expressed a wish to that effect.

VOLUNTARY STATEMENT

Of the Prisoners charged before the Judge of the Sessions, with having on the 19th October last, at St. Albans, in the State of Vermont, one of the United States of America, feloniously assaulted and put in fear of his life, and stolen from one Cyrus Newton Bishop, the sum of $70,000 *current money of the United States.*

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE OFFICE.

Bennett H. Young, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged

before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Bennett H. Young and others, to wit: Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Bennett H. Young, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Bennett H. Young is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Bennett H. Young* saith as follows:

I am a native of Kentucky, and a citizen of the Confederate

States, to which I owe allegiance. I am a commissioned officer in the army of the Confederate States, with which the United States are now at war. I owe no allegiance to the United States. I herewith produce my commission as first lieutenant in the Confederate States army, and the instructions I received at the time that commission was conferred upon me; reserving the right to put in evidence further instructions I have received at such time and in such manner as my counsel shall advise. Whatever was done at St. Albans was done by the authority and order of the Confederate Government. I have not violated the neutrality laws of either Canada or Great Britain. Those who were with me at St. Albans were all officers or enlisted soldiers of the Confederate army, and were then under my command. They were such before the 19th of October last, and their term of enlistment has not yet expired. Several of them were prisoners of war, taken in battle by the Federal forces, and retained as such, from which imprisonment they escaped. The expedition was not set on foot or projected in Canada. The course I intended to pursue in Vermont, and which I was able to carry out but partially, was to retaliate in some measure for the barbarous atrocities of Grant, Butler, Sherman, Hunter, Milroy, Sheridan, Grierson, and other Yankee officers, except that I would scorn to harm women and children under any provocation, or unarmed, defenceless, and unresisting citizens, even Yankees, or to plunder for my own benefit. I am not prepared for the full defence of myself and my command without communication with my government at Richmond, and inasmuch as such communication is interdicted by the Yankee government, by land and by sea, I do not think I can be ready for such full defence under thirty days, during which time I hope to be able to obtain material important testimony without the consent of said Yankee government, from Richmond.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) BENNETT H. YOUNG.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

Lieutenant Young's Commissions.

CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT,
Richmond, June 16th, 1864.

SIR,—You are hereby informed that the President has appointed you First Lieutenant, under the Act 121, approved February 17th, 1864, in the Provisional Army in the service of the Confederate States, to rank as such from the sixteenth day of June, 1864. Should the Senate at their next session advise and consent thereto, you will be commissioned accordingly.

Immediately on receipt hereof, please to communicate to this Department, through the Adjutant and Inspector General's Office, your acceptance or non-acceptance of said appointment, and, with your letter of acceptance, return to the Adjutant and Inspector General the oath herewith enclosed, properly filled up, subscribed, and attested, reporting at the same time your age, residence, when appointed, and the State in which you were born.

Should you accept, you will report for duty to

(Signed) JAS. A. SEDDON, Secretary of War.

Lieut. Bennet H. Young, &c., &c., P.A.C.S.

CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT.
Richmond, Va., June 16th, 1864.

Lieut. B. H. Young is hereby authorized to organise for special service, a company not to exceed twenty in number from those who belong to the service and are at the time beyond the Confederate States.

They will be entitled to their pay, rations, clothing, and transportation, but no other compensation for any service which they may be called upon to render.

The organisation will be under the control of this Department, and liable to be disbanded at its pleasure, and the members returned to their respective companies.

JAS. A. SEDDON, Secretary of War.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE OFFICE.

Samuel Eugene Lackey, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Samuel Eugene Lackey and others, to wit: Bennett H. Young, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Samuel E. Lackey, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C, Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Samuel Eugene Lackey is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken

"down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Samuel Eugene Lackey* saith as follows:

I am a native of the Confederate States, of which government I now owe allegiance. I have been thrown upon this government not designedly, but by the fortunes of war. I have violated no law of this country, or of Great Britain, unless it be unlawful for a Confederate soldier, driven by the hard fate of war, to ask the protection of the British flag. I am a soldier of the Confederate States army, having been recognized as such by the so-called United States government, from the fact of having been held as a prisoner of war, my command now being held as prisoners of war at Camp Douglas, Ill., from which place I made my escape through the mercenary character of these gallant Yankees, a people who make war for plunder, and are bravest when they make war upon women and children. I have, during the captivity of my command, been detached for especial service inside the enemy's lines, under the command of Lieut. Bennett H. Young.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) SAMUEL EUGENE LACKEY.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL.

POLICE OFFICE.

Marcus Spurr, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Marcus Spurr, and others, to wit: Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, Bennett H. Young, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, George Scott, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of

America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop, feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Marcus Spurr, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard M. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary, —being severally examined in his presence, the said Marcus Spurr is now addressed by me as follows: "Having heard the evidence, "do you wish to say anything in answer to the charge? You are "not obliged to say anything, unless you desire to do so; but what- "ever you say will be taken down in writing, and may be given in "evidence against you at your trial."

Whereupon the said *Marcus Spurr* saith as follows:

Am a native of Kentucky; an enlisted soldier of the Confederate States army, and my time has not yet expired. I owe no allegiance to the so-called United States, but to the Confederate States of America. I was held as a prisoner of war in a Yankee Bastile, and by bribing a "Yankee *pay-triot*" and by daring, escaped. Afterwards was engaged at different times with soldiers of the aforementioned army in doing duty in the Yankee States. Last summer at Chicago, I placed myself under the command of Lieut. Young. I was in the States when the raid upon St. Albans, Vt., was concocted by Lieut. Young and others. What I may have done at St. Albans, I did as a soldier of the Confederate States army, and in accordance with orders from Lieut. Young of said army. In doing this, I have violated no law of Canada or Great Britain. I have lost kindred, and have had kindred plundered.

And further Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) MARCUS SPURR.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE OFFICE.

Alamanda Pope Bruce, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Alamanda Pope Bruce and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Alamanda Pope Bruce, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard

L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Alamanda Pope Bruce is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Alamanda Pope Bruce* saith as follows:

I am a native of Kentucky, and am a Confederate States soldier. My term has not expired. I was made prisoner in June last by Yankee troops, and made my escape from a car whilst being carried as such to the Yankee prison at Rock Island. I joined Lieut. Young at Chicago last August. I have violated no laws of Canada or Great Britain; whatever I may have done in the so-called United States has been an act of war, as my government the Confederate States, are at war with the Yankees, and I owe allegiance to it, and am sworn to do my duty as a soldier. I am told that I am accused of having shot Morrison at St. Albans; if I had shot him it was my duty to do so. I am taken for a comrade who did do it who is not here. I do not say this to screen myself, but as it is the truth I justify the act as an act of war, though Morrison was not aimed at, but the armed man who skulked behind him. I have lost kindred in this war, a cousin brutally murdered in Camp Douglas whilst unarmed, and doing nothing to provoke it. Yankee plundering and cruel atrocities without parallel, provoked the attack on St. Albans as a mild retaliation.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) ALAMANDA POPE BRUCE.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL.

POLICE OFFICE.

Charles Moore Swager, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal,

this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Charles Moore Swager and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchison, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognised by the laws of the said State of Vermont, and of the said United States of America, from the person, custody, and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Charles Moore Swager, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Charles Moore Swager is now addressed by me as follows: "Having heard the evidence, do you wish to say any-"thing in answer to the charge? You are not obliged to say any-"thing, unless you desire to do so; but whatever you say will be "taken down in writing, and may be given in evidence against you "at your trial."

Whereupon the said *Charles Moore Swager* saith as follows:

I am a Kentuckian and a Confederate soldier, owing no allegiance to any government but the Confederate States of America. And as a soldier I feel it my duty to harrass and annoy the army and the navy of the United States, cripple and destroy its shipping and commerce, capture its towns and cities, and otherwise damage

if possible, a government which seeks our destruction. Any acts I might have committed at St. Albans, Vt., I did in the capacity of a Confederate soldier, acting under orders of Lieut. Bennett H. Young, a commissioned officer in the Confederate army. I have violated no law of Canada or Great Britain.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) CHARLES MOORE SWAGER.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal*, CITY OF MONTREAL. } POLICE OFFICE.

Caleb McDowall Wallace, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Caleb McDowall Wallace, and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, did, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody, and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against

the peace and dignity of the said State; and the said charge being read to the said Caleb McDowall Wallace, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Caleb McDowall Wallace is now addressed by me as follows: "Having "heard the evidence, do you wish to say anything in answer to the "charge? You are not obliged to say anything, unless you desire "to do so; but whatever you say will be taken down in writing and "may be given in evidence against you at your trial."

Whereupon the said *Caleb McDowall Wallace* saith as follows:

I am a native of Kentucky; but at the incipiency of the war now pending between the United States and the Confederate States of America, I was living in the State of Texas,—one of the Confederate States of America. I owe no allegiance to the United States, but my allegiance is due solely to the Confederate States of America. Whatever I may have done at St. Albans, I did as a Confederate soldier, and in obedience to the order and under the instructions of Lt. B. H. Young,—a commissioned officer of the Confederate States of America,—my commander at that time. I have not violated any law of Canada or Great Britain.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) CALEB McDOWALL WALLACE.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE COURT.

Joseph McGrorty, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Joseph McGrorty and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Alamanda

Pope Bruce, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody, and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Joseph McGrorty, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Joseph McGrorty is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Joseph McGrorty* saith as follows:

I am no criminal, nor are any of my comrades. The Yankees know this, and if we had been captured within their boundaries, either before or after the capture of St. Albans, we would have been tried, not by civil law, but by a military commission or drum-head court-martial. But they found us on a neutral territory, and now seek by Yankee ingenuity and the boasted influence of their government to get us into their power. I am a native of Ireland, and a naturalized citizen of the Confederate States of America, and of the State of Texas, and owe no allegiance to the United States, with which my country is at war. I am also a soldier of

the Confederate States army, and of the 6th corp Cav. Battalion. I was under General Morgan, in his expedition in Kentucky, last summer. I was wounded there, and remained in the State some weeks. When I recovered from the effects of my wound, I reported to Lieut. Young, for duty. Whatever I may have done in the capacity of a soldier, I feel that I did no more than my duty as a soldier, in obeying the orders of my commanding officer, Lieut. Young, a commissioned officer of the Confederate States army. I have violated no law of Great Britain or Canada,—so careful was I in this respect, that when I found myself on Canadian soil, I threw away my arms.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) JOSEPH McGRORTY.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE COURT.

George Scott, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said George Scott and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars

current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person, custody, and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said George Scott, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said George Scott is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *George Scott* saith as follows:

I am a Confederate soldier. I am a native of Kentucky, and owe no allegiance to the Federal Government, but to the Confederate States of America. Whatever I may have done at St. Albans, I did as a soldier, acting under the orders of Lieut. Young, an officer of the Confederate army. I have violated no law of Canada or Great Britain.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

GEORGE SCOTT.

(Signed)

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL.

POLICE OFFICE.

William H. Hutchinson, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand

eight hundred and sixty-four, for that the said William H. Hutchinson and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, and Marcus Spurr, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person and custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the Statutes of the said State of Vermont, in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said William H. Hutchinson, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said William H. Hutchinson is now addressed by me as follows: "Having "heard the evidence, do you wish to say anything in answer to the "charge? You are not obliged to say anything, unless you desire "to do so; but whatever you say will be taken down in writing, "and may be given in evidence against you at your trial."

Whereupon the said *William H. Hutchinson* saith as follows:

I am a native of the State of Georgia, and a citizen of the Confederate States of America. Have been an officer in the Confederate army since April, 1861. I am not guilty of the charge brought against me. I owe no allegiance to the Yankee government. In December, 1862, was robbed by the Yankee vandals of property valued at over $50,000. Have not violated the laws of Canada or Great Britain. I am perfectly willing to share the fate of my countrymen and fellow-soldiers.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) WILLIAM H. HUTCHINSON.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal*, CITY OF MONTREAL. } POLICE OFFICE.

Dudley Moore, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Dudley Moore and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce. Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Dudley Moore, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross,

James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Dudley Moore is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Dudley Moore* saith as follows:

Whatever I may have done at St. Albans I did as a Confederate soldier; acting under the direction and in obedience to the order of Lieutenant Young, of the Confederate States army. I am a native of Kentucky, and owe no allegiance to the United States, but to the Southern Confederacy. I have violated no laws of Canada or Great Britain.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) DUDLEY MOORE.

Taken, and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Canada,
CITY OF MONTREAL. } POLICE OFFICE.

Thomas Bronsdon Collins, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Thomas Bronsdon Collins, and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls,

and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Thomas Bronsdon Collins, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Thomas Bronsdon Collins is now addressed by me as follows: "Having heard the evidence, do you "wish to say anything in answer to the charge? You are not "obliged to say anything, unless you desire to do so; but what-"ever you say will be taken down in writing, and may be given in "evidence against you at your trial."

Whereupon the said *Thomas Bronsdon Collins* saith as follows:

I am a native of Kentucky and a commissioned officer of the army of the Confederate States at war with the so-called United States. I served under the command of Gen. John Morgan, and became separated from it at the battle of Cynthianna, Kentucky. Having eluded the Yankees, I joined Lt. Young afterwards at Chicago, knowing it to be my duty to my government as well as to myself never to desert its cause. I owe no allegiance to the so-called United States, but am a foreigner and public enemy to the Yankee Government.. The Yankees dragged my father from his peaceful fireside and family circle, and imprisoned him in Camp Chase, where his sufferings impaired his health and mind, and my grandfather has been banished from Kentucky by brute Burbridge. They have stolen negroes and forced them into their armies, leaving their women and children to starve and die. They have pillaged and burned private dwellings, banks, villages and depopulated whole districts, boasting of their inhuman acts as deeds of heroism and exhibiting their plunder in northern cities as

trophies of Federal victories. I have violated no laws of Canada or Great Britain. Whatever I may have done at St. Albans, I did as a Confederate officer acting under Lt. Young. When I left St. Albans, I came to Canada solely for protection. I entered a hotel at Stanbridge unarmed and alone, and was arrested and handcuffed by a Canadian magistrate (Whitman) assisted by Yankees. He had no warrant for my arrest, nor had any sworn complaint been made to him against me. About $9,300 was taken from me when arrested, part Confederate booty lawfully captured and held by me as such, and part of my own private funds. I ask the restoration of the money taken from me and my discharge as demanded by the rules of international law. The treaty under which my extradition is claimed, applies to robbers, murderers, thieves, and forgers. I am neither, but a soldier serving my country in a war commenced and waged against us by a barbarous foe in violation of their own constitution, in disregard of all the rules of warfare as interpreted by civilized nations and christian people, and against Yankees too wise to expose themselves to danger, while they can buy mercenaries and steal negroes to fight their battles for them, who whilst prating of neutrality seduce your own people along the border to violate the proclamation of your august Sovereign by joining their armies, and leave them when captured by us to lanquish as prisoners in a climate unwholesome to them. If I aided in the sack of the St. Albans banks, it was because they were public institutions, and because I knew the pocket-nerve of the Yankees to be the most sensitive, that they would suffer most by its being rudely touched. I cared nothing for the booty, except to injure the enemies of my country. Federal soldiers are bought up at $1000 a head, and the capture of $200,000 is equivalent to the destruction of 200 of said soldiers. I therefore thought the expedition "would pay". I "guess" it did in view of the fact also, that they have wisely sent several thousand soldiers from the "bloody front" to protect exposed points in the rear. For the part I took I am ready to abide the consequences, knowing that if I am extradited to the Yankee butchers, my government can avenge if not protect its soldiers.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) THOMAS BRONSDON COLLINS.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL.

POLICE OFFICE.

James Alexander Doty, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Enquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said James Alexander Doty and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, did, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols commonly known and called revolvers. loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said James Alexander Doty, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary, —being severally examined in his presence, the said James Alexander Doty is now addressed by me as follows: "Having heard "the evidence, do you wish to say anythin in answer to the charge? "You are not obliged to say anything, unless you desire to do so; "but whatever you say will be taken down in writing, and may be "given in evidence against you at your trial."

Whereupon the said *James Alexander Doty* saith as follows:

I am a Confederate soldier. What I may have done at St. Albans was by order of Lieutenant Young, an officer in the army of the Confederate States.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) JAMES ALEXANDER DOTY.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J. S. P.

PROVINCE OF CANADA,
District of Montreal,
CITY OF MONTREAL. } POLICE COURT.

Samuel S. Gregg, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Samuel Simpson Gregg and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Squire Turner Teavis, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans, in the State of Vermont, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit: pistols commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him the said Cyrus Newton Bishop in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit: to the amount of seventy thousand dollars current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and the said United States of America, from the person, custody, and possession, and against the will, of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont, in such case made and provided, and against the

peace and dignity of the said State; and the said charge being read to the said Samuel Simpson Gregg, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivieres, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Samuel Simpson Gregg is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in "answer to the charge? You are not obliged to say anything, "unless you desire to do so; but whatever you say will be taken "down in writing, and may be given in evidence against you at "your trial."

Whereupon the said *Samuel Simpson Gregg* saith as follows:

I was born and reared in the State of Kentucky. I am a Confederate soldier. My term of service is not yet expired. I owe no allegiance to the United States Government. Whatever I may have done in the month of October last, in St. Albans, in a military point of view I did as a Confederate soldier, acting under orders of Lieut. B. H. Young, Confederate.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) SAMUEL S. GREGG.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day, and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

PROVINCE OF CANADA, *District of Montreal*, CITY OF MONTREAL. } POLICE OFFICE.

Squire Turner Teavis, late of the town of St. Albans, in the State of Vermont, one of the United States of America, stands charged before the undersigned, Charles Joseph Coursol, Esquire, Judge of the Sessions of the Peace in and for the city of Montreal, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-four, for that the said Squire Turner Teavis and others, to wit: Bennett H. Young, Samuel Eugene Lackey, Alamanda Pope Bruce, Charles Moore Swager, George Scott, Caleb McDowall Wallace, James Alexander Doty, Joseph McGrorty, Samuel Simpson Gregg, Dudley Moore, Thomas Bronsdon Collins, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the said State of Vermont, and within the jurisdiction

of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit, pistols, commonly known and called revolvers, loaded with powder and balls, and capped, in and upon one Cyrus Newton Bishop feloniously did make an assault, and him, the said Cyrus Newton Bishop, in bodily fear and in danger of his life then and there feloniously did put, and a certain sum of money, to wit, to the amount of seventy thousand dollars, current money of the said United States of America, and of the value of seventy thousand dollars current money aforesaid, of the moneys and property of the bank of St. Albans, a body corporate, constituted and recognized by the laws of the said State of Vermont, and of the said United States of America, from the person, custody and possession, and against the will of the said Cyrus Newton Bishop, then and there feloniously and violently did steal, take, and carry away, against the form of the statutes of the said State of Vermont in such case made and provided, and against the peace and dignity of the said State; and the said charge being read to the said Squire Turner Teavis, and the witnesses for the prosecution,—Cyrus Newton Bishop, Edward C. Knight, James F. Desrivières, Aaron B. Kemp, Leonard L. Cross, James R. Armington, Charles A. Marvin, George Roberts, Roswell A. Ellis, George W. Fairchild, John McLoughlin, Henry N. Whitman, Marcus W. Beardsley, James Saxe, Daniel G. Thompson, and John O'Leary,—being severally examined in his presence, the said Squire Turner Teavis is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer "to the charge? You are not obliged to say anything, unless you "desire to do so; but whatever you say will be taken down in "writing, and may be given in evidence against you at your trial."

Whereupon the said *Squire Turner Teavis* saith as follows:

I am a native of Kentucky, a soldier of the Confederate States army. I joined the said army on the 3rd of September 1862. I owe my allegiance to the Confederate Government, and not to the infamous and tyrannical Yankee Government. Whatever I may have done at St. Albans, I did as a soldier of the Confederate army; not on my own responsibility, but in obedience to the orders of Lieut. Young of said army. I have violated no law of Great Britain or Canada.

And further the Examinant saith not, and hath signed, the foregoing having been previously read in his presence.

(Signed) SQUIRE TURNER TEAVIS.

Taken and acknowledged before me, at the Police Office in the said city of Montreal, the day and year above mentioned.

(Signed) CHAS. J. COURSOL, J.S.P.

Mr. Devlin said it was now the time when the counsel for the prisoners should enter upon their defence. One of the cases against the prisoners had been closed, and the Court should now call upon them to establish their defence. He hoped the Court would call upon the counsel for the accused, to proceed at once; the counsel for the prosecution being prepared, when the gentlemen on the other side had closed their defence, to argue this case, and obtain the judgment of the Court before being called upon to go on now with other cases against the prisoners.

Mr. Kerr.—The learned counsel certainly made a very extraordinary demand, and one which the Court would assuredly look upon with no favor. What was to be understood by this application? What case did his learned friend allude to when he asked that the counsel for the prisoners should now be called upon to make their defence? Was it the case of the First National bank, or the St. Albans bank? When the facts connected with the First National bank were under consideration, it was distinctly understood by the counsel for the defence, that all the cases were to be proceeded with, and that after they were closed, the accused should be called upon to make their defence. In proof of this understanding, the cases of the two banks had been proceeded with simultaneously. But although this was the case, the counsel on the other side, in order to put themselves in possession of the prisoners' means of defence, and discover their weak points, and fortify their position that those means could not be in any subsequent case, now called upon the Court to compel the accused to make their defence. The distinct understanding between the prosecution and the defence was, that all the cases were to be gone through with, as he had already stated. His Honor the Judge was a witness of the correctness of the assertion; and the irrefutable evidence of the fact was, that the two cases of the two different banks at St. Albans were proceeded with at the same time. The counsel for the defence had made no objection when the second case was called upon, although at the time the first was not half finished. And now because one of these cases chanced to be finished, the other side called this side to enter upon the defence. It would be useless for the counsel on behalf of the accused, to encumber themselves and the Court, and to fritter away time with six different defences, especially when they intended to limit themselves to one defence on the merits, to one defence in all the cases. The counsel for the accused would bind themselves to close their defence in a reasonable time. On Saturday evening the counsel on both sides had agreed upon a delay, and had approximately settled the conditions of it. In fact the counsel for the accused were under the impression the agreement was closed, and would be carried out;

and he was exceedingly surprised this morning to find that they were to be taken by the throat and required to proceed with the defence. He did not think, after the facilities which the counsel on this side had afforded to gentlemen on the other side to go on with their cases, that the understanding with which the cases commenced should be violated, even if the agreement of Saturday should be broken up. In consequence of this understanding, Mr. Laflamme, one of his *confrères*, had left town, and he did not think it right or fair, that it should thus be set aside by the counsel for the prosecution.

Mr. Ritchie, on the part of the prosecution, would say, that he had been present several days and heard no word of such agreement. It was certainly not known between the gentlemen representing the United States, and the gentlemen for the defence. If there was any such agreement it must be between the gentlemen representing the Canadian Government and those for the defence.

Mr. Devlin had been in the case since the beginning and considered he represented the United States generally as Mr. Ritchie did. He (Mr. D.) could therefore state that he was utterly opposed to any attempts made to obtain delay. The prosecution now declared the case of the St. Albans bank closed; but they did not wish to press the gentlemen on the opposite side as to time. The prosecution wished those gentlemen to name the day on which they would go on with the defence. As to the understanding of Saturday night, if the defence had been led astray, and if on that account, any of their witnesses were absent, they would be entitled to reasonable delay in order to get the witnesses back.

Mr. Johnson, *Q. C.*, said that nothing would give him greater pleasure than that there should be an understanding, so that delay would be avoided, and the case facilitated. But the idea of the Crown of England making an agreement with criminals, was a thing totally unheard of. He could not enter into any agreement with the prisoners for delay; and the reason was that such an agreement would not be binding on the prisoners.

Hon. Mr. Abbott, *Q. C.*—What has been stated by my learned friend, Mr. Kerr, is perfectly correct. When the examination of witnesses commenced, there was an understanding to the effect that the examinations in all the charges should be taken before we entered upon the defence. That was the understanding on all hands; and my learned friends on the other side had at that time no other course in contemplation. It was suggested to your Honor—or rather your Honor originated the idea—that it was better that the portion of the evidence of each witness applicable to any particular charge, should be taken by itself, apart from that having reference to other charges. For instance, if Mr.

Sowles could testify as to the facts in the case of the First National bank, that evidence should go into one deposition, while any evidence he could give in the case of the St. Albans bank should go into another. I think this was an arrangement well calculated to prevent confusion, and, so far, it has done so. And to show that this arrangement was comprehended by my learned friends opposite, they proceeded promiscuously with the examinations of witnesses in the cases of both the St. Albans banks; some of those witnesses giving evidence applicable to both charges, the depositions being, however, kept separate. There has been a great deal of good effected in thus keeping the evidence in each charge so well defined and distinct.

There is no question here of an agreement between the Crown and criminals, for the Crown has nothing to do with the case whatever, and the prisoners are not criminals under our laws—even if they are guilty as charged. The question was merely one of regularity of procedure, which it is your Honor's province to decide upon; and all parties, with your Honor's sanction, having proceeded with these cases in a well-defined and convenient mode, it is submitted that that mode should not now be departed from. And there is no reason for departing from it, but the contrary.

The accused are charged with seven offences; but can they be seven times extradited? The object of these charges is to get the accused across the frontier; and if one of them is proved, that one would warrant their extradition, while proof of them all would do no more. To all these charges we have only one defence to make; and, in fact, the evidence thus far taken shows that all the offences charged are acts committed in an enterprise—of which each act is only an incident. I don't understand whether this prosecution is carried on by the Crown or the United States Government; but whichever of these two authorities it is, if the proposition of the prosecution be adopted to try each case separately, and if they fail to make out the present charge, of course evidence will have to be taken on the next charge, and we will also have to bring up our evidence, and to go over the same ground again, and so on till all the charges are disposed of—or until one is established. At such a rate of proceeding, these men will be kept in gaol for six months, whether innocent or not, which is probably the intention.

The distinction between this and ordinary criminal investigations is an obvious one. If these men were under charges of seven crimes committed in Canada, they would be liable to seven punishments if they were found guilty. That would be a good reason for trying them separately; but there is no good reason for doing so when a commitment upon them all would entail no greater punishment as far as this tribunal is concerned, than if they were com-

mitted upon one. All confusion may be avoided by taking the charges together, and then we will submit our defence, which rests on one ground only. We have made no unnecessary cross-examination; we have thrown no obstacles in the way; and we now desire the case to proceed. Let the whole of the charges be brought up, and then it will be found we are ready with our defence.

Hon. Mr. Rose, Q.C., contended that the defence should now be called upon; and by this course being adopted, the case would not only be facilitated, but the interests of justice subserved. If the prisoners are committed on this charge, no further enquiry is necessary. If they are discharged on the merits of it, it would be useless to proceed on any other.

Mr. Abbott.—Then if they are discharged on this charge, will you abandon the others?

Mr. Devlin.—We will answer that when the time comes.

At the opening of the Court at two o'clock,

Judge Coursol said: Now that the voluntary examinations have been closed, I desire to state that I in no way recognize this proceeding as regular or legal, and do not wish that it should be considered as a precedent for the other cases. The voluntary examinations were taken because Mr. Johnson, as representing the Crown, in this case requested it; but I entertain serious doubts as to the necessity of it, and would, therefore, wish it to be understood that I give no legal opinion as to whether the voluntary examination of the accused, under the provisions of the Statute to give effect to the Extradition Treaty, is a proper proceeding or not. Then, coming to the point submitted to me before the recess, I have arrived at the conclusion that it is better to allow the accused a reasonable delay for their defence: but, before according that delay, I must be satisfied that a sufficient reason exists for it, and I therefore call upon the counsel for the defence to state whether they have any preliminary objections to urge as to the proceedings in the St. Albans bank case, as the nature of their objections if there are any may very much affect my course of procedure in granting the delay asked for on the part of the defence. The disposal of these preliminary objections seems to me necessary, with the view to save time, and to dispose of those matters as speedily as possible. Those objections may be of such a nature as to dispense with the necessity of any defence whatever, and upon this point I must be satisfied before I grant a delay for a defence upon the merits. It is necessary, in the interests of the public service, for the peace and tranquillity of the country, that these cases should be proceeded with as speedily as possible, having, of course, due regard to the interests

of the accused, and I wlll do all in my power to see that no unnecessary delay shall arise. At the same time, I shall expect the prosecution, whether a delay be granted or not, to proceed with the other cases, or declare they withdraw them; if the counsel for the defence had any preliminary objections to the proceedings in the St. Albans bank case I am prepared to hear them.

Mr. Abbott said that such a question took them very much by surprise, and that he had not yet scrutinised the proceedings for the purpose of ascertaining whether a preliminary objection was available; but that he would be prepared to answer the question if a little time were given.

Judge Coursol said that the delay to be given to the prisoners for preparing their defence would depend greatly upon the nature of the preliminary objections made.

Mr. Abbott said that surely the fact that the prisoners considered the proceedings informal, and objected to them, could not possibly affect the opinion of the Judge as to the length of time that should reasonably be allowed them for their defence.

Judge Coursol said that it might very materially affect that question.

Mr. Kerr said that the counsel for the prisoners would offer no preliminary objection which they did not feel their duty to their clients compelled them to do; and he trusted that the performance of that duty would not expose their clients to have the time shortened, which would otherwise be considered a reasonable time.

Judge Coursol said he should decide, after hearing the objection, what delay would be reasonable.

Mr. Devlin desired to know what the objections were?

Mr. Abbott said that at this moment he could not say whether any objection would be made or not.

Mr. Rose said he thought the objections should be previously signified to the parties in writing.

Mr. Johnson said he had supervised the proceedings on the part of the Crown, and that he was prepared to sustain them without any previous notice.

Judge Coursol said that to require previous notice was very unusual.

Tuesday, Nov. 15.

At the opening of the Court this morning,

Mr. Kerr rose and said he had observed in the warrant that certain property or effects stated to be stolen, were alleged to be stolen from the bank of St. Albans. This allegation was an important one, and one without which it would have been impossible to arrest the prisoners. But in this warrant, issued under the provi-

sions of the Treaty, and the statute to give effect to the Treaty, the same particularity was required as in an indictment. The warrant should show the offence committed by the prisoners, in order that they should be legally apprehended. It was necessary to show who was the person robbed, and whose were the effects. The learned gentleman having cited authority, went on to say, the warrant disclosed the special fact that the money belonged to the bank of St. Albans. Now the question to be decided was—had any evidence been brought forward to show that there was such an institution in existence in the State of Vermont as the bank just named? He affirmed there was no such evidence. What had been shown was, that an act or incorporation had been given to the "President, Directors and Company" of a certain bank. There was nothing to substantiate the fact that the bank of St. Albans was the institution meant in the incorporation of a certain "President, Directors, and Company." It was hardly necessary to cite authorities to prove that no corporate body could be named in an indictment, except in the proper terms; in fact this point was settled two years ago, at a term of the Court of Queen's Bench held in this city, and in a case in which he and his learned friend Mr. Devlin were engaged. It was only by its corporate name that the existence of any institution could be recognized. In this case the corporate name had not been given; therefore the Court did not know there was any such institution as the bank of St. Albans.

Mr. Devlin replied that if this argument had been applied to a bill of indictment, it might, perhaps, have some weight; but applied in a preliminary investigation of this nature, it could have no effect. There was a vast difference between a simple investigation of charges and a bill of indictment. The prisoners were not before the Court on a bill of indictment.

Judge Coursol said that the remarks of Mr. Kerr might hold good if the prisoners were before the Court on an indictment for an offence. But they were not in that position, and this was simply a preliminary examination. If errors had been made, they had been rectified by the evidence, and the Court could still further rectify any errors in the final committment, if such a commitment had to be made out.

Hon. Mr. Abbott made application for a delay of thirty days to enable the prisoners to obtain the evidence necessary for the defence; and in support of the application, read the following affidavit made by Young, Collins, and Wallace, on behalf of themselves and of their fellow prisoners.

PROVINCE OF CANADA,
District of Montreal,
LOWER CANADA, TO WIT.

POLICE COURT.

Bennet H. Young, Thomas Bronsdon Collins, and Caleb McDowall Wallace, being themselves prisoners, and on behalf of their fellow prisoners in this matter, being severally duly sworn, do depose and say: That deponents and the other prisoners charged with the offence now under investigation require certain testimony which is necessary and material to their defence, and which they are unable to procure in Montreal, or even in Canada. That they desire to prove and can prove, if time be allowed them to procure the requisite evidence, that every one of the prisoners now in custody is an officer or soldier of the army of the Confederate States of America, duly enlisted, enrolled or commissioned respectively, and their term of service has not expired. That they also desire to prove and can prove, if time be allowed them for that purpose, that this deponent, Bennet H. Young, is, and was on the nineteenth day of October last, an officer of the army of the Confederate States of America, holding the commission and rank of first lieutenant in that army, and that they, the rest of these deponents, and of the prisoners, were duly engaged and placed under his command for special service, under the authority to him given by the government of the said Confederate States, through the Secretary for the War Department thereof. That they also desire to prove and can prove, if time be allowed them for that purpose, that every act and thing which they or any of them did on the 19th of October last, at St. Albans, in the State of Vermont, was so done under and in pursuance of the orders of the said Lieutenant Young, given by him by virtue of his instructions from the said government and of his authority in the premises. That all and every of the said acts were duly authorized and directed by the military authorities of the said Confederate States acting under the Government thereof, and were acts of warfare committed and performed in conformity with the rules and precedents by which civilized warfare is conducted; and that they were more than justified by the acts of generals and armies in the service and under the orders of the Federal Government of the United States, and as retaliation for such acts. That the said acts of these deponents and of the other prisoners have, as deponents are informed and believe, been approved of by the said Government of the said Confederate States, as being done in conformity with instructions so received from the said Government. That deponents and the other prisoners have applied to the Hon. Mr. Edmonds now here representing the United States Government for a safe conduct for a messenger to proceed to Richmond

in the said Confederate States for the documentary and other evidence required to establish the foregoing facts, but that the said application has not been granted. That if such safe conduct were granted, the said evidence could be obtained in eight or ten days, but as the same has been refused, a period of at least thirty days will be required to enable these deponents and the other prisoners to obtain such evidence by other means, and that a less period of time than the said period of thirty days will be insufficient to enable them to obtain the same. And deponents further say that if they are not accorded the said delay to enable them to procure the evidence necessary for their defence, such evidence as they will be enabled to offer will be necessarily less perfect than if a just and humane indulgence were accorded to them, such as they now declare to be necessary; and that if by reason of the want of the requisite time to obtain such evidence, their defence should be imperfectly established, and they should thereupon be delivered to the emissaries of the Federal Government, such a proceeding will be handing them over to certain death at the hands of the executioner, on the pretence that they have committed crimes which they never either committed or contemplated, and which they look upon with abhorrence; but in reality because they are the enemies of the Northern Government, engaged in warfare against them, and because that government desires to wreak vengeance upon them, which is neither justifiable by the laws of war nor any civilized country; and that such a death would be a judicial murder, the guilt of which would lie upon those by whom deponents would be deprived of the power of adducing evidence in their defence; and deponents have signed.

(Signed) BENNETT H. YOUNG,
T. B. COLLINS,
C. M. WALLACE.

Sworn before me, at Montreal, this 15ih day of November, 1864.
(Signed) CHAS. J. COURSOL, J.S.P.

Mr. Abbott submitted to his Honor that the prisoners should be allowed the thirty days they prayed for.

Mr. Johnson, Q.C., on the part of the Crown, took this affidavit to mean that the prisoners desired thirty days' delay to procure evidence. He could not conceal from himself that this was the first time any such question arose since the passing of the Treaty. It was quite true that in England and here, in the case of crime committed within our own jurisdiction, a magistrate might receive exculpatory evidence, and return it with the other evidence. But did this course apply to crimes under the treaty, committed in

foreign jurisdiction? Not at all. What would be the effect of the Court granting this application? Why, it would be to oust the courts of the United States of their jurisdiction. If thirty days were granted, then these gentlemen might, at the end of that time, ask for a hundred days,—the one request would be as reasonable as the other. He was not prepared to say these gentlemen had power, in the face of the United States authorities, to penetrate to Richmond, and obtain documents, under thirty days; but at all events, the demand was one which his learned friends had no right to make. To grant such demand would be to deprive the United States courts of their jurisdiction.

Mr. Kerr said he was happy to see that the Crown, or rather the counsel for the Crown, had at last got rid of the haze which, since the commencement of these proceedings, had enveloped the position occupied by him, and had now come out in his true colors, when he said on the part of the Crown of Great Britain that he protested against thirty days being allowed the prisoners to communicate with the capital of the country to which they professed to belong. The Government of Great Britain or that of Canada had no right whatever to interfere in this case; and the conduct of the Crown here in the management of this prosecution had been marked from beginning to end by an exhibition of the most disgraceful despotism on the part of its ministers and of those who attended to its interests in this Province, in support of which allegation he referred to the experience of the learned Judge of Sessions himself. He maintained that the Government of Canada,—he would not say that the Government of Great Britain was responsible, as it knew nothing of the proceedings adopted in this case,—in the course it had taken in the present enquiry, had shown an ignorance of constitutional law which would draw upon it the reprobation of the law officers of Great Britain when the circumstances of this case came to the ears of the people of that country. He believed it would never be said in Great Britain, that that country which had boasted of being an asylum of political refugees from time immemorial—which had received and protected the refugees from France at and since the time of the First Revolution—which had even shielded its present Emperor from the hands of his enemies—would authorise her officers to appear in any case of extradition in order to deliver up men whose only offence was their being political refugees, to use their own words "thrown by the fortunes of war on her soil." The Crown here had forgotten its duty in employing its officers to prosecute this case, for it was patent that from the first they had appeared against the prisoners conjointly with the counsel for the United States. In ordinary cases the course was that, after the

magistrate or justice had completed the enquiry and made his report, the law officers of the Crown were called upon for their opinion thereon. But we had evidence throughout of a prejudging of this case, having had subordinates of the Crown coming here to conduct the prosecution; and without any knowledge of the facts of the case, the intention of the government, we believe, has been to extradite the prisoners if by any means it possibly could be effected. The objections against the solicited delay would have come with some grace from the counsel for the United States, but for the counsel for the Crown to have opposed it, to have virtually contended that it was not proper or desirable to have all the facts of the case elicited—thus endeavoring to suppress the real facts and circumstances at issue—was something truly astonishing, and which could never have been expected in a country boasting of any Englishman, Irishman, or Scotchman at its head. He (Mr. Kerr) would now address himself to the argument of the counsel for the Crown, who had said he did not know whether we were entitled to produce evidence or not in this case.

Mr. Johnson was understood to contend that they were entitled to produce exculpatory evidence if at hand; but that his Honor was not obliged to wait any length of time asked by the counsel for the defence.

Mr. Kerr maintained it was not a matter for the discretion of the Justice, the allowance of the production of evidence on the part of the defence; but a matter of strict right. It was clearly laid down by the present chief justice of the Court of Common Pleas, as well as by one of the justices of Her Majesty's Court of Queen's Bench in London, that a prisoner has a right to bring forward evidence in his own defence. In order to support his position, he would refer to Saunders' Practice of Magistrates' Courts, page 154, on the subject of "Calling witnesses in behalf of the Prisoner." It is there said that "it may be that the prisoner is in a position to rebut by evidence the case established against him, and that he is desirous of calling witnesses. Formerly it was doubted whether or not it was the duty of the magistrates to hear this evidence, but the received opinion at the present day is, that it *is* their duty." In the absence of any judicial decision upon the subject it may be convenient to refer to the Opinion of four very eminent and learned personages, namely, the late Attorney General (now Chief Justice of the Common Pleas), Mr. Crompton (now Mr. Justice Crompton), and Messrs. Ellis and Hall, given upon a case submitted to them by the Magistrates of Leeds. That case raised *inter alia*, the following questions:

First—Is it incumbent upon the magistrate before whom an indictable offence is in course of preliminary investigation, to

hear and examine witnesses adduced by the prisoner in his answer or defence to the charge against him; or has the magistrate any discretion to receive or reject such evidence, and if any discretion, of what kind or nature is it, and how ought it to be exercised by him?" This was the answer. "First—The question firstly submitted to us is certainly not free from difficulty, but considering that the practice under the old statute was to examine a prisoner's witnesses, and that the language of the 11th and 12th Vic., cap. 42, s. 17, admits of such a construction, and that the interests of justice demand it, we think that it is incumbent on magistrates to hear and examine such of the witnesses offered by the prisoner as appear (in the language of the statute) to know the facts and circumstances of the case." At page 157 it would be seen that in this view of the matter Chief Baron Pollock exactly coincided. With respect to showing that the magistrate, to a certain extent, acted as a judge, which had been denied by the learned gentleman on the other side, he (Mr. Kerr) would refer to another passage in "Saunders." But first it would be observed that counsel on the other side held that the magistrate was to satisfy himself that a crime had been committed, in disposing of a prisoner, but not to satisfy himself that a crime had not been committed. It was thus laid down in the authority just mentioned: "If, however, from the slender nature of the evidence, the unworthiness of the witnesses or the conclusive proof of innocence produced on the part of the prisoner, they (magistrates) feel that the case is not sustained, and that if they committed for trial, a verdict of acquittal must be the necessary consequence, they will at once discharge the accused, and so put an end to the enquiry as far as they are themselves concerned." Then, were the defence to be deprived in this case—taking it for granted there were certain portions of international law applicable—of the privilege of bringing forward the witnesses considered necessary for the defence? Could it be pretended that, when they said it was utterly impossible to obtain, for the present, testimony from Richmond, owing to the difficulties which beset communication with that city—when there were refused a safe conduct by the United States—when these facts were established on oath, that in a British Court of justice a prisoner so situated was not to have the opportunity, the time to bring up the testimony necessary for his defence, but that at the demand of a foreign Power, or through the cowardice of our nation, fearful of the invasion, threatened by the New York papers, the prisoners before us were to be deprived of that justice which hitherto it had been the boast of every Court in Great Britain and Ireland was extended to the humblest as well as the noblest subject in the land? Arguments such as those advanced by the

counsel for the Crown showed that they were afraid to encounter the evidence the defence would bring forward of the character in which the prisoners figured in their raid on St. Albans. As Mr. Laflamme had something to remark on this point, he would say no more at present.

Mr. Laflamme said that the proposition on the part of the Crown officers was that the granting of the delay asked for would deprive the tribunals of the United States of the exercise of their jurisdiction upon the offence alleged against the prisoners. Assuredly a proposition of this description was rather a strange one to come from the Crown officers, as it would amount to an indication of a sort of conspiracy entered into between them and the Federal authorities, for the purpose of kidnapping the prisoners from British territory, where they were entitled to their freedom, and to surrender them to their enemies who were awaiting their rendition, not to do justice to, but to wreak vengeance upon them. This would be the result of the proceedings, if the prisoners were denied the right of exculpating themselves. It had been said also that when prisoners had exculpatory evidence at hand, they might be allowed the privilege of bringing it up; but when they had not such ready, they should not be allowed the privilege of adducing it. Upon what authority could such a principle rest? He had several times heard very strange law, but this was the strangest he ever listened to. The exceptional character of the prisoners, and the exceptional position in which they stood, far from limiting the privileges ordinarily allowed the accused, should rather operate to their greater liberty and advantage; because were it not for the treaty which gave His Honor jurisdiction in such matters, even suppose the prisoners had committed crimes in the States, they could not have been made amenable in Canada. The acts which they committed out of the limits of this jurisdiction were no crimes cognizable by His Honor or any Courts of this Province, and consequently every benefit of law extended to the accused must be accorded the present prisoners, who could not be considered as criminals in the eyes of the committing magistrate. They were only detained for the execution of the international treaty between Canada and the United States, and could not be detained or regarded as criminals till such evidence of criminality be adduced as would justify His Honor in committing for extradition. The prisoners had committed no offence according to our law, and more than the ordinary benefits of that law should be accorded them. Assuredly, in a case of this description, it would be sufficient to refer to the Statute, independent of the general principle of law, to establish that evidence according to the rules of our own law was required to show that an offence had been committed. There might be crimin-

ality on their part, but they must necessarily be allowed every opportunity to show there was no criminality. If a party was accused of murder and came before the Court and showed the man said to be murdered was alive or killed by accident, assuredly there could be no criminality chargeable, and if a man accused of theft could prove the property supposed to be stolen belonged to him there certainly would be no criminality in such a case. Therefore if a magistrate were bound to commit a man only in case of sufficient evidence of the offence being adduced, the prisoner must be allowed the privilege of proving that no offence had been committed. The statute applicable in this case bound His Honor to examine on oath any person, touching the truth of the offence charged against the party whose extradition was demanded, and to exact before committal such evidence of guilt as would justify a magistrate, if the crime were committed in this province, in sending the party to jail for trial. Therefore, if evidence must be brought touching the truth of the charge, the accused might produce testimony in answer to prove it groundless, and they could not be deprived of this right. In addition to these reasons in favor of the petition, it had been an invariable practice of His Honor to allow the accused to bring up exculpatory evidence, and it would be impossible to deviate in this case from that course. The Crown had also asserted that the evidence which could be allowed was such as would amount to a denegation of the act itself. It was impossible for the prosecution to show that a denial of the crime could not be made as well by adducing evidence that destroyed the essence of criminality as if the defence denied the fact itself. The main question and the condition of the exercise of the magistrate's jurisdiction in this matter was the existence of a crime against the municipal laws of the United States such as defined by the treaty. If they established that this was an act committed by the order of a government, by one of two belligerents, recognized as such by Britain, be it a case of plunder or a mere case of devastation, involving the loss of life, there was no case of murder or robbery. Be this a most extraordinary deviation from the ordinary rules of common warfare, be it inhuman, and against the principles even of civilized warfare, independent of any other question than its being an act committed by regular, commissioned troops, under a special order from a belligerent Power, in such a case there was no more room for an application of the treaty, than in the case of an appeal for the extradition of any of the Southern gentlemen in this colony on a charge of annoying the Government of the United States. If a party could show that a hostile act was committed according to instructions by a regularly commissioned soldier of a belligerent government, he proved it was not an act of murder or robbery, but a political act for which there might

be a remedy, but not under the present treaty law. Evidence might be produced in behalf of the prisoners every whit as beneficial as proof in a case of murder that the supposed murdered man was alive. He could see no difference between exculpatory testimony of one kind or other. If the prisoners were entitled to show any evidence whatever in exculpation, time must be allowed them; because if time were not allowed, it would be as well to deny them justice absolutely, and deliver them up to the American authorities who were here, assisted by all the powers in this country, exercising a most unjust and unlawful influence not only upon public opinion, but upon every officer in the public service, to make them act not as judges, but as police officers, in order to obtain by every possible means the surrender of the accused to the United States authorities. If the Crown wished to disclaim any unjust action on its part in this prosecution, and show it was actuated by fair motives and wished to see the treaty well carried out, they ought to give full scope to the defence, and not begrudge a delay of thirty days for the procuring of exculpatory testimony. The Crown had resorted to various methods in the conducting of the case, such as bringing forward only one charge at a time, in order to experiment, to feel their way, to increase the chances of rendition on some of them, with the object of securing that result. But there were two parties equally entitled to justice in this case—one the Confederate and the other the Federal States. The former had come forward claiming the exercise of that British impartiality and the benefit of that British liberty which Britain never denied the refugee once he entered British territory. And when these prisoners had reached the shelter of the British flag, and were prepared to show that they had committed nought but an act of justifiable warfare, it was strange to see the Government act as it had done, trying all in its power to curtail the efforts of the defence to establish the innocence of the accused. He (Mr. L.) was sure His Honor, considering the risk and difficulty experienced in reaching the Confederate capital, would not refuse such a reasonable demand as thirty days' delay, which would enable the defence to show beyond a doubt that the acts charged against the prisoners in reality were neither robbery nor murder, but acts of common and justifiable warfare.

Mr. Devlin desired to say that the gentlemen employed as counsel for the United States concurred in the opposition made by Mr. Johnson to the application for delay. The prisoners were arrested on the 19th of October; but had they shown that from that time up till now they had adopted any means to secure the attendance of witnesses? Hon. Mr. Edmonds, who specially represented the U. S. government, had declared that his government had desired every reasonable means of defence should be

allowed the prisoners before final judgment was rendered. But if thirty days more were allowed, it would be simply a denial of justice.

Hon. Mr. Abbott.—In our affidavit this morning it was not necessary to give the details of what we had been doing to procure evidence. We are not called upon to state such facts, and by so doing put the gentlemen on the other side, and the Federal government on our track. My learned friend Mr. Devlin, treats this case as if it were one of petty larceny committed within the jurisdiction of the justice, and appears to think that we should be bound by the rules that govern such cases. This, on the contrary, is a matter of unusual importance, involving grave questions of international law, of national honor and duty, and affecting also the lives of fourteen men. If these questions are to receive the consideration they deserve, the facts must be fully ascertained, and the nature of the case renders it evident that full information upon them can only be obtained in Richmond. And as by the route which must be followed, we are at a distance of 1,500 or 1,600 miles from Richmond, and to reach it have to pass through hostile territory, guarded at every point, how can we hope to obtain evidence in less than thirty days? We could get it in ten days, if a safe conduct had been granted to a messenger.

Judge Coursol.—This is a very important matter, and requires some consideration. I shall give a decision at two o'clock.

After recess, *Judge Coursol* gave judgment as follows:—An application on the part of the prisoners to obtain a delay of one month for the production of evidence for the defence has been very urgently and ably argued before me this day. This application has been opposed by Mr. Johnson, representing the Crown, and Mr. Devlin, in the name of the American authorities, upon the ground that although in cases of local offences I possessed the power of granting such an application, under the treaty I did not possess that power, as I would be thereby virtually assuming the jurisdiction of the American Courts to try the accused. This question arises for the first time, as we find in the Chesapeake and other cases that witnesses for the defence were examined without objection. I do not profess at present to decide the point absolutely, but have come to the conclusion to allow the examination of witnesses on the part of the prisoners, subject to the objection, as my desire is to afford to the accused as well as to the prosecution, the exercise of every right to which by law they are entitled in a Canadian Court of Justice. It is contended that by admitting evidence for the defence I virtually try the accused. I totally differ from that view, and for this obvious reason, that the special Act to give effect to the treaty requires that I should be per-

fectly satisfied of the criminality of the act of the accused according to our own law. The affidavit shows that the accused propose to prove that anything they may have done was an act of legitimate warfare, and as international law is a part of the common law of this country, affecting the character of homicide and other felonies when committed under special circumstances, I cannot be prepared to give any opinion upon the evidence of criminality until I have the whole case before me. The evidence proposed to be adduced may not affect the case laid before me by the prosecution, but I feel that I should be guilty of an act of injustice if I deprived the accused of the opportunity of placing their evidence before me, reserving to myself finally to determine the objection now made to the hearing of evidence, when the case is finally closed and left to my decision. Having thus disposed of this point, the next consideration is what delay shall be granted. The application is for one month, and the question in my mind is whether such a delay be a reasonable one or not. I have arrived at the conclusion that, under the special circumstances disclosed in the affidavit, to grant merely a week or a fortnight would be tantamount to refusing the application, and I will therefore grant until the 13th of December next, upon the express condition that, if the prosecution so desire it, the further proceedings upon the other charges shall be suspended until the evidence for the defence and the argument in this case shall be fully concluded, and also, in that event, the prisoners must place before me a written application that they be remanded upon all the charges until the said 13th day of December next.

Mr. Devlin then said he would state without hesitation that the prosecution would not proceed with any of the other charges until this case was finally decided, the arguments concluded, and His Honor's decision given on its merits.

Judge Coursol.—The prosecution may do as it thinks proper until the arguments and the witnesses shall be heard.

Mr. Devlin.—You grant this delay, making it a condition that this case is to be finally concluded, and the opinion of the Court expressed before we are called upon to proceed on any further charge. I state that we will not do so.

Judge Coursol.—The evidence in the other cases will not be gone into, until the defence and arguments in this are fully concluded.

Mr. Devlin.—We will avail ourselves of that part of your Honor's judgment, and will not proceed till the case is fully determined.

Mr. Kerr.—Is the decision of the Court to be pronounced in this case previous to going on with any others ?

Judge Coursol.—I am not prepared to say so. My judgment is that the evidence in other cases shall not be gone into, till the defence and arguments in this case shall be fully closed.

Mr. Kerr.—Very well, your Honor.

Judge Coursol.—Something has been said about pressure, but I can say that neither favor nor affection has ever been allowed to interfere with justice since I have had a seat on this Bench, and I am sure my fellow-citizens will be prepared to give me that endorsation.

Mr. Kerr.—We are perfectly convinced of that, your Honor.

Judge Coursol.—I shall require, in writing, from your clients, Mr. Kerr, that they will not apply for any release until the 13th of December.

Mr. Devlin.—I am requested by my friends from the United States to say that they concur in the judgment given by your Honor. They desire me to say that they concur fully in the postponement of the matter for a month, provided the other cases are not gone on with till this one is finished.

Tuesday, Dec. 13.

The enquiry into the facts of this raid, adjourned, nearly a a month ago, till to-day, in order to afford time for the production of evidence for the defence, from Richmond, was resumed this morning before Judge Coursol.

Messrs. Abbott and Laflamme, Q.C., and Mr. Kerr, appeared for the defence, Mr. Johnson for the Crown, and Mr. Ritchie and Mr. Devlin for the U. S. Government.

The accused occupied the petit jury box.

Mr. Kerr.—I wish to bring under your Honor's notice a question affecting your jurisdiction in this case.

The Judge of the Sessions.—As Judge of the Sessions?

Mr. Kerr.—As Judge of the Sessions, or in any other capacity in which you may sit.

Mr. Devlin said the enquiry had been adjourned till to-day to enable the accused to adduce evidence in their defence, and the Court was in session to hear this testimony, and not an argument upon the law of the case. This proceeding of the learned gentleman was an attempt to take advantage of the prosecution; and he (Mr. D.) would call on the defence to proceed with the witnesses.

Mr. Kerr.—My objection goes to the jurisdiction of the Court. If it has no jurisdiction, it has no right to hear witnesses. I pretend that the whole of the proceedings are wrong.

Mr. Devlin pressed for a decision upon his proposition.

The Judge of the Sessions.—The objection is to my jurisdiction *in toto?*

Mr. Kerr.—Yes. I deny your right to sit at all.

The Court.—The objection cannot be disregarded. I am bound to hear the exceptions to my jurisdiction.

Mr. Johnston.—I have no objection to hear them.

Mr. Kerr then said,—By the Union Act it is provided that the Canadian Parliament shall have power to make laws not repugnant to that Act, or to such parts, &c., or to any Act of Parliament made or to be made, and not thereby repealed, which does or shall, by express enactment or by necessary intendment, extend to the Provinces of Upper and Lower Canada, or to either of them, or to the Province of Canada; and all such laws passed and assented to by Her Majesty, or in Her Majesty's name by the Governor, &c., shall be valid and binding, &c., within the Province of Canada. The condition precedent, then, to the fact of statutes being valid and binding, is that they are not repugnant to any Imperial Act which either expressly or impliedly extends to the Province of Canada. Acts to which Her Majesty has given her assent after reservation, are subject to the operation of the condition precedent. By the Treaty of 1842, *quoad* extradition, it was provided that upon mutual requisition by the two States contracting, their Ministers, officers, &c., made, it was agreed the United States and Great Britain should deliver up to justice all persons charged with the crimes specified in the said Treaty, committed within the jurisdiction of either of the high contracting parties, who should seek an asylum or be found within the territories of the other. This should only be done upon certain evidence, and it proceeded to say that the respective judges and other magistrates of the two governments should have power and authority to issue a warrant, &c. By this Treaty the contracting parties pledged themselves to vest in all their judges and other magistrates power and authority to take cognizance of and exercise jurisdiction over such crimes, neither judges nor magistrates having at the time any Common Law or statutory power to take cognizance of such offences. The Imperial Act 6 and 7 Vic., cap. 77, was then passed by the Parliament of Great Britain, for the purpose of giving effect to the said Treaty, and it was therein provided, that *previous* to the arrest of any offender, a warrant should issue under the hand of the Secretary in Great Britain, or of the person administering the government of the Province, signifying that a requisition had been made by the authority of the United States for the delivery of the offender, and requiring all Justices of the Peace, &c., to govern themselves accordingly, and to aid in apprehending the persons accused. It is perfectly clear from the principles of the Common Law, and also from the wording of the Act in question, that none of the magistrates or other officers were vested, previous to the passing of that Act, with power to arrest or take cognizance of offences committed on foreign soil, for the Act in question was passed to give them those powers, and it is to be remarked that the words of the Statute

carry into effect the Treaty. This Statute, of course, extended its operation over all the dominions of Great Britain, and as soon as passed and assented to, became law in Canada. By the fifth section it was, however, provided that, "if by any law or ordinance "thereafter made by the local Legislature of any British Colony "or possession abroad, provision shall be made for carrying into "complete effect, within such colony or possession, the objects of "the said Act, by the substitution of some other enactment in lieu "thereof; then Her Majesty might, with the advice of her Privy "Council, (if to Her Majesty in Council it seems meet, but not "otherwise,) suspend within any such colony or possession the "operation of the said Act of the Imperial Parliament, so long as "such substituted enactment continues in force there, and no "longer." The 12th Vic., c. 19, was passed by the Parliament of Canada as such substituted enactment, and was reserved for Her Majesty's assent; that assent was given, and on the 28th March, 1850, Her Majesty in Council, by order, suspended the Imperial Act so long as the 12th Vic., c. 19, should be in force, and no longer.

The Court.—Was the 12th Victoria sanctioned?

Mr. Kerr.—It was a reserved Act. The Order in Council was proclaimed by the Governor General in the Canada *Gazette*, page 8295, May 1850. Thereupon the Imperial Act was suspended in Canada during the continuance in force of the 12th Vict., chap. 19. By "the Act respecting the Consolidated Statutes of Canada," (22nd Vic., chap. 29, C. S. C., page xxxvi), the 5th section, it is provided that from the day mentioned in the proclamation provided for by s. 4, all the enactments in the several acts, and parts of acts in such amended schedule A, mentioned as repealed, shall stand and be repealed; by the 9th section it is enacted that if the provisions of the Consolidated Statutes are not the same as those of the repealed acts *quoad* transactions after those statutes came into effect, the provisions of the Consolidated Statutes shall prevail. In schedule A (C.S.C., page 1203), appears as repealed, 12 Vic., chap. 19. Upon the proclamation by the Governor General, of the Consolidated Statutes, there appeared as chap. 89 of the 22nd Vic., "An Act respecting the treaty, between Her Majesty and the United States of America, for the apprehension and surrender of certain offenders." By the 24th Vic., chap. 6, the first, second, and third sections of the 89th chap., C. S. C., above referred to, were repealed absolutely, and for the said sections were submitted three other sections. By the first section substituted, jurisdiction was taken away from the justices of the peace throughout the Province, and to certain functionaries alone was given the power to take a complaint and issue a warrant.

Under the 12th Vic., chap. 19, and c. 89 of the Consolidated Statutes of Canada, the evidence in the opinion of the judge or justice of the peace should be sufficient to sustain the charge; under the 24th Vic., chap. 6, it is only necessary to be such as would justify his apprehension and committal for trial. Here then are grave changes from the provisions of the 12th Vic., chap. 19. We have, moreover, the absolute repeal of that statute by the Act 22 Vic., chap. 29; it is true that it was substantially re-enacted by the 89th chap. of the Con. Stat. of Canada, but from the very moment of its repeal the Imperial Statute revived and remained in force in this country until a new order of the Queen in Council had been published, suspending its operations during the continuance in force of the 89th chap. of the Con. Stat. of Canada. But to make assurance doubly sure, the 24th Vic., chap 6, absolutely repealed all the three first clauses of the 89th chap. C. S. C., and substituted in their places three clauses which had never been submitted to the consideration of Her Majesty in Council, clauses, moreover, which cannot be looked upon as giving complete effect to the treaty, as thereby some of the officers expressly named in the treaty as those to whom power to act thereunder should be given, have been ousted of their jurisdiction. It must be taken for granted thàt the Order in Council having the effect of putting life into any Act of Parliament passed by our legislature, must be posterior in date thereto; in fact, it is nothing more than requiring that previous to the coming into force of the substituted Act, Her Majesty's assent thereto should only be given by such Order in Council. The power to repeal any act of our Legislature belongs to our Legislature; no restriction is by Imperial Act imposed on the repeal of the substituted enactment, and no other body, save our Legislature, in the natural course of things, could repeal its Acts; consequently the repeal of the three clauses of chap. 89, of the Consolidated Statutes of Canada is valid; but the clauses sought to be substituted have, as yet, no life in them,—they are but inanimate bodies, awaiting the breath of life from the order of Her Majesty in Her Privy Council. The state of the law then is, that in lieu of our Provincial Statutes, or any of them, being in force, the Imperial Act, temporarily suspended *quoad* this Province by the Order in Council of the 28th March, 1850, since the repeal of the 12th Vic., chap. 19 (whether by the Consolidated Statutes, or by the 24th Vic., chap. 6, is indifferent), regulates all proceedings for extradition, and previous to any of the officers therein named issuing a warrant or arresting a person charged with the commission of one of the crimes (mentioned in the treaty), in the United States, it was absolutely essential, in order to give your Honor jurisdiction in the matter, that a warrant should be issued

from the Governor General, according to the provisions of the Imperial Act. No such warrant, however, has been issued; and you have not, nor had you at any time, jurisdiction in these cases to arrest the prisoners.

The *Court.*—Your argument is, in effect, that, according to the Imperial Act, it would be necessary to the arrest of the accused that a warrant of apprehension signed by the Governor General should be issued; that owing to the circumstances mentioned, the Imperial Act has revived and is now in force, and that under it I would have no jurisdiction in this case?

Mr. Kerr.—No jurisdiction, no warrant having issued.

Mr. Devlin thought that a reply to such arguments, on the part of the counsel on the other side, was unnecessary. He would merely remind His Honor that he acted at present under the law of the land—acted under the powers conferred upon him by chap. 6, 24th Vic. Was the Ashburton Treaty in force—yes, or no? One might assume from the argument just heard that we had been living in blissful ignorance of our rights and of the law of the land in this matter till the present moment. The learned counsel just sat down called upon the Court to trample upon the law of the land, and ignore the authority conferred upon him by the Provincial Legislature. Had the Court the power or jurisdiction to set aside a solemn act of Parliament, while sitting in his present capacity? Such power was not vested in him; and if the Legislature had failed to pass a law that would give force and effect to the Imperial Treaty, they were the party to make due amends. The Act passed in 1861 gave His Honor full power to dispose of such cases, and this Act was assented to by Her Majesty, and had not since been repealed or disallowed. With regard to the argument that the Court was without jurisdiction because no warrant had been issued signed by the Governor General, he (Mr. D.) would remark that fugitives from justice had frequently been arrested here without a warrant in the first instance, except one from the local judge or magistrate charged with the execution of the provisions of the Treaty; for this reason: if the authorities of the United States were obliged to wait till all those formalities were complied with, a murderer or robber whose extradition was demanded could effect his escape from this Province before any steps could be taken to secure his arrest: and, say the Judges of the United States, "the Treaty would in this way be rendered nugatory." But even if there was no law for such arrests, it was not in the Court's power, while in his present position, to set aside a solemn act of the Legislature of Canada.

The *Court.*—It would be very well for the public convenience, but it would not be law to arrest parties on either side the lines without a warrant. I cannot accept that argument as law.

Mr. Devlin did not mean to say that parties should be arrested in this Province without some authority; but he meant that it was in His Honor's power to issue his warrant for the apprehension of a fugitive before waiting for other authority, or a warrant from the Governor. The opposite pretension would cause a frustration of justice, and render it impossible to carry out the provisions of the Treaty.

Mr. Johnson said Mr. Kerr was in error in stating that 12 Vic., chap. 19, had been repealed. No such thing. He had cited from the schedule annexed to the Act to show it had been repealed. But repealed for what—for the purpose of consolidation with the other statutes. It is now reproduced in the Consolidated Statutes, and exists with the exception of three clauses. The 6th and 7th Victoria (Imperial Statute) was suspended by proclamation of Her Majesty, and the 12th Vic. cap. 19 introduced as the law which ought to guide the mode of procedure under the Ashburton Treaty. But this Act never was repealed, being reproduced in the Consolidated Statutes. The Consolidated Statntes, chap. 29, page xxxviii set forth that it should not be held to operate as new law, but should have effect as consolidated and as declaratory of the law contained in the Acts so repealed, and for which they were substituted. His Honor, therefore, had jurisdiction to proceed without a warrant from any governor or any executive authority under the Consolidated Statutes now existing.

Mr. Kerr said they did not require the judge to set aside any Act. As long as the proclamation of Her Majesty, giving effect to the amended Act, was withheld, it remained in our statute book inanimate. It wanted breath and life to be infused into it by the order in Council. He contended that by the 24th Vic., chap. 6, the 12th Vic., chap. 19, had been absolutely repealed, and it could not be pretended that the substitution by our Legislature of three clauses other than those assented to by Her Majesty did not alter the 12th Vic., chap. 19, and destroy its force.

The *Court* said it was a knotty point, and must be taken into consideration.

Mr. Devlin.—You can go on with the examination of the witnesses in the meantime.

The *Court.*—Not when the question is as to jurisdiction.

The Court now adjourned until two o'clock.

THE RAIDERS DISCHARGED.

At three o'clock the Judge of the Sessions came into Court and proceeded as follows to give his decision upon the objections to his jurisdiction raised in the forenoon:—

The point I am now called upon to decide is one of very great importance, inasmuch as my jurisdiction and my authority to act in this case has been put in question, and is now for the first time directly denied.

It is contended on behalf of the prisoners that the Treaty being a national act, the imperial enacment must be regarded as the Supreme Law, and our colonial Legislatures as subordinate to it. And that the effect of Her Majesty's Royal Proclamation suspending the imperial enactment to give effect to our 12th Vic., so long as such substitututed provisions of that act remained in force, and no longer, necessarily revived the provisions of the Imperial Act, the moment our local Legislature repealed the substituted enactment and provisions of our Provincial Legislature.

It is also contended that the new provisions enacted by the 24th Vic., changed materially those of the 12th Vic., approved by Her Majesty, with the advice of her Privy Council, and that the same approval was again necessary to give effect to these new provisions, and that the arrest of the parties charged, could only have been made upon a warrant signed by the Governor General or person administering the government of Canada in the terms of the Imperial Act.

On the other side, on the part of the defence, it is argued that the 24th Vic., has been sanctioned by the Governor General, and having been disallowed by Her Majesty within two years which period had passed long before the arrest of the accused, that it has power of law. Also, that I have no power to declare the 24th Vic., unconstitutional or void.

This argument would be conclusive if the Act related to a local matter, within the ordinary jurisdiction of our Legislature, and interpreting the clauses quoted of the Union Act as I do now, I hold that this provision as to the disallowance of a measure passed by our Legislature, can only have reference to such measures as our own legislature can originate.

In this case it is different, the subject matter is a national one, it has a reference to a treaty between Great Britain and a foreign nation, and the imperial act must be regarded as the law which governs the case. That our legislation is subordinate to it in this instance, and in the absence of any sanction, or formal approval given by the Queen to the 24th Vic., in the *special form* required by the Imperial Act, such as was given to the 12th Vic. I am of opinion that by repealing the clauses of that Act conferring jurisdiction, the imperial enactments revived. I am not called here upon to declare the 24th Vic. unconstitutional or void, but simply state what law is *in force*, and I feel that I am bound to obey the imperial authority in a matter of national concern, and without which the treaty would never have been put in operation.

After giving to these different objections my most deliberate attention, I have come to the following conclusion :—

1. That the Imperial Act passed to give effect to the treaty is to be regarded as the supreme power and authority, and to be taken as my sole guide in this case, and that the *Canadian enactment* could take effect only, so long as the *permissive* power granted to our local legislature has been strictly pursued, followed by the sanction of Her Majesty's Privy Council *suspending* the imperial enactments, and giving force and effect to our local legislation.

2. That the 12th Vic. passed by our legislature with the view to substitute provisions to those contained in the Imperial Act, did not become the law of this Province without the Royal sanction first being given to it, in the form of a special approval by Her Majesty, with the advice of Her Privy Council; and in the terms of the Imperial Act, the suspension was not absolute, but limited to such a time as the 12th Vic. should remain in force, *and no longer*.

3. That the substituted provisions of the 12th Vic. having been repealed by the 24th Vic. cap. 19, the provisions of the Imperial Act *are revised*, which provisions to confer jurisdiction require the issuing of a warrant in the *first place*, by the Governor General, or the person administering the government of Canada.

4. That while admitting, as contended by the learned and able gentlemen representing the prosecution, that unless the Union had had in all matters relating to local government, the sanction of the Governor General on behalf of Her Majesty the Queen, is sufficient to make a law operative, still the subject matter in this case being a treaty between two nations reqniring imperial legislation to give it effect the case is so exceptional in its character that I am compelled to look to the proposed Act to decide what is the force of our local legislature in that respect.

Giving, therefore, to the 5th section of the Imperial Act a broad and legal interpretation, I cannot arrive at any other conclusion than that any substituted enactment to that Act of our Legislature must not only be approved by Her Majesty of Her Privy Council, but also that an order of suspension must expressly be made to give it effect.

That the new provision contained in the 24th Vic., changed very materially the provisions of the 12th Vic., approved by Her Majesty by Royal Proclamations, issued with the advice of Her Majesty's Privy Council, by removing from all of Her Majesty's Justices of the peace jurisdiction in these matters, which, by the terms of the treaty itself, is conferred upon them, giving such powers to the Judges of our Superior Courts and to the local officers not designated in the 12th Vic., and thus, in my humble opinion, the new provisions of the 24th Vic. are sub-

ject to the following objections : That being a Colonial measure, it was not within the power of our Legislature to change the jurisdiction established by the Treaty, without the express sanction of Her Majesty, with the advice of her Privy Council, in the same form and in the same manner as was done to give effect to the 12th Vic., viz., the express order of Her Majesty, suspending by Her Majesty's pleasure the Imperial enactments so long as the enactments contained in the 12th Vic. should remain in force, and no longer. The 24th Vic., cap. 19, is entitled an Act to amend the chap. 89 of the Consolidated Statutes of Canada (the same as the 12th Vic.), and has, in most positive words, repealed the 1st, 2d and 3d of the four sections of the said Provincial Act, and substituted certain new enactments already mentioned. This Act having been passed and sanctioned, the repealing part is good ; therefore the suspended parts of the Imperial Act are revived by such repeal, and are again in operation. Thus the suspended provisions of the Imperial Act being revived, the only law which can govern this case are the revived Imperial provisions, in so far as jurisdiction is concerned, and the manner of proceeding to obtain the arrest and extradition of fugitives. The only unrepealed provisions of the 12th Vic., namely, the 4th section, refer only to the remedy given to parties committed who are not extradited within two months after the date of their final committal; but the provision of the 4th section cannot even be regarded as a substitute provision, as it merely re-enacts a similar provision to be found in the Imperial Act. Consequently the repeal may be considered complete, in so far as the substitute provisions are concerned. I deem it my duty, in giving this judgment, to explain that the part I have taken in this case in ordering the arrest of the accused, was prompted by a desire to do my duty, the moment proper information was laid before me that an outrage was committed, and I acted upon a law which is to be found in the statutes of this Province. The objection having been raised for the time at this late stage of the proceedings, I felt that I had no alternative but to decide it. If I could have reserved the point for the decision of a higher tribunal, I would most willingly, and I may say cheerfully, have done so, but the objection being one formally directed against my jurisdiction, I came to the conclusion that every judge or magistrate, in a case where the liberty of the person is concerned, should be prepared positively, and in a definite manner, to decide whether he has jurisdiction or not. I therefore now decide, that having had no warrant from the Governor General to authorize the arrest of the accused, as is required by the Imperial Act, I have and possess no jurisdiction ; consequently, I am bound in law, justice, and fairness, to order the immediate release

of the prisoners from custody upon all the charges brought before me. Let the prisoners be discharged.

Mr. Devlin.—Before you deliver that order, I trust you will hear the counsel for the United States on a matter of such great importance. We desire to bring under your notice this important fact, that only one application has been made to you, and that the counsel who addressed you this morning appeared only in the case of the St. Albans bank, which has been the subject of investigation hitherto. You are aware it was determined that only one case could be proceeded with at a time, and therefore the application addressed to you was for the discharge of the prisoners in this particular case. You owe it to the gentlemen sent here to support what they conceive to be the just claims of the United States Government in this matter, and to justice also, to afford them a reasonable opportunity of putting before this Court the claims of their clients. When only one application has been made, should it be said that a Judge in a British Court, where fair play was peculiarly to be expected, should have disposed of six cases on an application with regard to one only, without the counsel for the United States being allowed to interpose a single objection, or offer a single remark. What would be said of a British Judge in such circumstances? The counsel for the defence know perfectly well that such a case would be utterly unprecedented. They know that, having had the benefit of your ruling, the Courts were open to them to obtain for their clients that relief which they had a right to expect. But let them come forward with their applications. Have you not issued six warrants against the accused? You have only one warrant before you now, and only one charge. Therefore, I call on you to hesitate before discharging them from six other accusations which we have not had a single opportunity of addressing the Court on. Would you order the discharge of a criminal accused on six indictments, because acquitted on one, without trial on the others? You would never sanction such a thing, and this is what you would be doing in this case. As a judge, you are not supposed to know that the proceedings in the other cases are not strictly correct. If you carry out this order, it will be said our Judges prejudged cases, because, while being addressed on one they disposed of others. The character of the judiciary for fair play is at stake; and though there are in this city men who sympathize with the enemies of the U.S., I have yet to learn there is one who is not a lover of fair play and British justice to all parties. I will state my conviction that if the clients we represent here are made to feel that when they enter a British Court of Justice their claim will not be heard, we must be prepared to submit to the consequences. No country in the world has shown more real fairness

and justice to England in matters of extradition than the United States. The authorities show that when England has demanded the extradition of a fugitive from justice, the highest and the lowest judges, and all the authorities have combined to give effect to this most beneficial law; and no man can say the United States Government or authorities ever threw an obstacle in the way of an extradition rightfully demanded. I sincerely hope you will not then dismiss the other cases with which we are now prepared to proceed. If you deny us this legitimate opportunity of representing our claims, it will be said that advantage has been taken of this prosecution, and of the counsel on this side. I again hope you will sanction no act which would be as repugnant to justice, as insulting to our clients. You will recollect that the other judges have a right to adjudicate in this matter, having concurrent jurisdiction.

The Court.—I have decided I have no jurisdiction in this case after a careful consideration.

Mr. Johnson said it appeared to him Mr. Devlin misunderstood the decision, evidently thinking the Court discharged the accused in every case, as to murder, robbery, &c.

The Court.—I discharge them in every case before me.

Mr. Laflamme wanted to know if counsel had a right to argue upon a judgment amd discuss its merits. The Court could not more clearly explain the grounds of the judgment. The prisoners were discharged from all the accusations, and were free, and any remarks made by counsel might be made for their benefit after the Court was over.

Mr. Johnson was not prepared to say one word against the judgment, having merely risen to remark that he represented the Crown, which had an interest in this case also, but of a very different description from that of his learned friend (Mr. D.)

Hon. Mr. Rose.—As representing the authorities of the United States in this matter, which is of very great national concern, I trust you will allow me to ask whether we have rightly understood the judgment just given?

The Court.—I will read it again, and shall answer Mr. Devlin in a few words.

Hon. Mr. Rose.—I don't design to say a word against the judgment, but to ask a question respecting it. (The hon. gentleman was proceeding to put the question, when)

The Court interrupted. He had allowed one of the gentlemen representing the Federal Government, and Mr. Johnson, representing the Crown, to speak, permitting the former to explain himself, and say more, probably, than any other Court would have listened to under similar circumstances. Understanding the full

amount of his responsibility in this matter, and determined that he should perform his duty according to the rules of British justice, he had come to the conclusion that, having no jurisdiction in one case, he could certainly have none in the others. If he had no jurisdiction to arrest the accused on the charge preferred, he had no right to keep them in custody for one moment longer. He knew now, that from the beginning of this case to the present, that those parties had been arrested without any legal warrant. As soon as the want of jurisdiction in this matter became apparent, after a legal test, desiring to administer justice in a Canadian Court in the same way and with the same spirit of impartiality and fairness, as it was, had been, and would be, thank God, always administered in all of Her Majesty's dominions, he was convinced that he had not the shadow of a right to detain the prisoners one minute longer. Having no jurisdiction in one case he had none in the others, and would frankly declare his warrant was null and the whole proceedings irregular.

Hon. Mr. Rose.—There was no application for the discharge of the prisoners on the other accusations.

The Court.—I care not. It is the duty of a British Judge, when he sees he has no right to retain a prisoner in custody, to liberate him on the spot.

Hon. Mr. Rose.—With all respect to your Honor, I dissent from the soundness of the judgment in this case.

The Court.—Not a word more on this matter. I know the weight of the responsibility of such a course, but I am bound as a Magistrate to do what my conscience and duty direct, without regard to influences, feelings or consequences.

PROCEEDINGS BEFORE JUDGE SMITH.

Immediately after the discharge of the prisoners by Judge Coursol, Mr. Justice Smith issued a warrant for the re-arrest of the prisoners, similar to those under which they had been previously in custody. On this warrant, five out of the thirteen, namely, Lieutenant Bennett H. Young, W. H. Hutchinson, Squire Turner Teavis, Charles Moore Swager, and Marcus Spurr, were again arrested, near Quebec, on the 20th day of December, 1864, and brought back to Montreal for examination. The following are the proceedings in the Superior Court, before Justice Smith, on the demand for their extradition.

PROVINCE OF CANADA, }
District of Montreal. }

The examination of *Cyrus Newton Bishop*, of St. Albans, in the State of Vermont, one of the United States of America, teller, now of the city of Montreal, in the District of Montreal, taken on oath this 27th day of December, in the year of our Lord one thousand eight hundred and sixty-four, in the Court-house in the city of Montreal, in the District of Montreal aforesaid, before the undersigned, the Honorable James Smith, one of Her Majesty's Justices of the Superior Court for Lower Canada, in the presence and hearing of Squire Turner Teavis, Charles Moore Swager, Bennett H. Young, Marcus Spurr, and William H. Hutchinson, who are now charged before me, upon complaint made under oath before me, under the provisions of the Treaty between Her Majesty the Queen and the United States of America, and our Statutes in that behalf made, with having committed within the jurisdiction of the United States of America, the following crime mentioned in the Treaty between Her Majesty the Queen and the United States of America, to wit:

For that they, the said Squire Turner Teavis, Charles Moore Swager, Bennett H. Young, Marcus Spurr, and William H. Hutchinson, on the nineteenth day of October last past, at the town of St. Albans aforesaid, in the State of Vermont, one of the United States of America, and within the jurisdiction of the said United States of America, being then and there armed with certain offensive weapons and instruments, to wit: Pistols commonly called revolvers, loaded with powder and ball, and capped, in and upon one Samuel Breck feloniously did make an assault, and him the said Samuel Breck in bodily fear and in danger of his life did put, and a certain sum of money, to wit, to the amount of three hundred dollars current money of the United States of America, and

of the value of three hundred dollars current money aforesaid, of the moneys and property of the said Samuel Breck, and another his co-partner in trade, to wit, one Jonathan Weathertree, from the person and against the will of the said Samuel Breck, then and there feloniously and violently did steal, take and carry away, against the form of the Statutes of the said State of Vermont, and against the peace and dignity of the said State.

The deponent, *Cyrus Newton Bishop*, being duly sworn, deposeth and saith :—On the nineteenth day of October last, I was fulfilling the duties of teller of a certain banking institution known as the St. Albans bank, in the town of St. Albans aforesaid, between the hours of three and four o'clock of that day, in the afternoon. Two men, strangers to me, entered the bank. They came up to the front of the counter. I stepped along to the counter. They immediately presented each of them a revolver to my breast. I was about three feet from them at this time. I recognize one of these men now in Court. His name is Marcus Spurr. I immediately went into the Directors' room, which is adjoining. I succeeded in closing the door nearly, and they rushed against it and forced it open. The door struck me in the forehead and bruised me. Immediately one of them named Collins seized me by the shoulder, and presenting a revolver at the same time to my head, and the said Marcus Spurr also presented a revolver at my head, and they said to me, that if I gave any alarm or made any resistance they would blow my brains out. At this time three other parties came into the bank, who were then and still are strangers to me. The said Collins then asked me where we kept our gold and silver. I told him we had no gold. He then asked me if we had any silver. I told him we had. He asked me where it was. I told him it was in a safe, and pointed it out to him. Then he, the said Collins, administered to me, and to one Martin A. Seymour, a clerk in the bank, some sort of an oath, to the effect that we would not give any alarm, or fire on the Confederate soldiers. Then they proceeded to pack up the money, and they then ordered me to open the safe in the Directors' room. I opened it, and they immediately pulled out two or three bags of silver, about fourteen hundred dollars' worth. One remarked to the other, "We cannot carry so much." Thereupon they broke open the bags and filled their pockets. They took all they could carry. They took also all the bills of the bank and the bills of other banks in our safe, and a lot of money of the United States, commonly known as greenbacks. During the time they were in the bank they locked the door of the bank, and some person came to the door and knocked for admittance. They opened the door, and the person came in, and this person was one Samuel Breck, of St.

Albans aforesaid, merchant. After admitting Mr. Breck they immediately locked the door again. One of them put a revolver to his head, and demanded his surrender as their prisoner. They took hold of him and forced him against the counter, and demanded his money, which he had in his hand. He began to debate the question with them, and said that it was private property. I spoke to him, and said that he had better give it up to them. I said they had robbed us, and as they had got us, we were obliged to give up the money. They forced him into the Directors' room. I learnt that the amount they took from him was about four hundred dollars American currency. These parties also threatened the said Breck that if he gave any alarm they would shoot him. There was another rap at the door by some one wishing to gain admission. They opened the door, and the person came in, who was a clerk in the store of Joseph S. Weeks, and they seized him by the shoulder and forced him into the Directors' room, and ordered him to remain there with the rest of us, and we were all kept in that room. About this time I heard some firing in the streets. I stood opposite the window and saw into the street, and I then saw persons on horseback riding to and fro. They were firing revolvers at the citizens of St. Albans. Immediately afterwards three of these parties left the bank, leaving two in the bank as guards over us. These also left in a few minutes. During all these proceedings these five persons were acting in concert. I allude, of course, to the five persons who came into the bank and committed the robbery as aforesaid, of which five persons the said Marcus Spurr, one of the prisoners now in attendance, was one.

Cross-examined on behalf of the Confederate States.—I have been examined before on a charge against these same men. I detailed the facts respecting these matters on that occasion, and I related on that occasion the circumstances that took place at St. Albans on the nineteenth of October last. When the prisoner Spurr, and Collins presented pistols at my head, I asked them what the programme was, and what this meant; and they said they were Confederate soldiers, detailed from Early's army to come north to rob and plunder, as Gen. Sheridan was doing in the Shenandoah valley. The reason why I omitted this fact, in my examination-in-chief, was because I supposed they wanted only the prominent points, and this was not asked of me. Being asked whether I omitted it intentionally or not, I say that I had no intention one way or the other. I stated that fact when I was examined before, in my examination-in-chief. I don't know whether the prisoners consider this fact of importance or not. The money that Breck had was in his hands when it was taken from him. The first firing I saw was from the front window of the Directors' room. The

street in which the firing was, runs nearly north and south. There appeared to be confusion among the party riding about, some riding in one direction and some in another. I next saw them after the five had left the bank and after I came out on the steps. They were more in order at that time—were collected together, and were riding north. I could not tell whether they were under the command of anybody or not at that time. They were at the northern end of the bank. There were a good many people in the streets then, more than usual. After I came out on the steps I saw some shots fired, but not many. I heard reports, but I saw no shots fired. I say, on reflection, that I saw some shots fired after I came out. I cannot tell who fired these shots. I think I know pretty well what goes on in St. Albans of any interest. Being asked whether or no one or more of the party was wounded at St. Albans on that occasion, I say I heard such reports, and again heard them contradicted. I do not know whether it is known or not who fired on the party. I do not know whether any citizen fired on the party, and I do not know that I am bound to say what I believe. I saw a large bunch of money in Mr. Breck's hand, and he told me there was about four hundred dollars, and I believed him. Being asked why I state my belief in reference to Mr. Breck's money and refuse to state my belief in reference to the firing on the party, I say I saw Mr. Breck's money and heard his statement on the spot; and the other, I did not see the party fired on, but I heard that they were, and also I heard that report contradicted. I know Mr. Fuller of St. Albans. I have had conversation with said Mr. Fuller. He made statements to me about what was going on generally. He never told me anything particularly about the firing. I heard him make statements generally, but not more to me than to any one else. I heard him say that he had snapped at them, and inferred that he meant he had snapped a percussion cap at them. I did not know anything about whether there was any powder or ball near when he snapped the percussion caps. I think perhaps he was trying to fire at them, and that his gun or pistol missed fire. Being asked if I have any doubt as to this being his intention, I say that I did not see the transaction. I do not know where Fuller was at that time. I know that a citizen was shot that day. I understand that he was shot in the Main street at St. Albans. I heard it reported that he was shot near the place where Fuller was trying to fire upon the party. This citizen fell to the north of the bank; was shot then, about fifteen or twenty rods from it. I believe he was shot by one of the party. The place where he fell was between the bank and the place where I saw the party all riding off in a body. I believe—I know personally—that there were other banks robbed at St. Albans

on that day besides the St. Albans bank. There was the Franklin County bank and First National bank. I know it, because afterwards I went into the banks and was told all the facts, and was showed that they had no money—that they had been robbed, the same as we had been. I did not notice that any buildings had been set fire to; I understood the American Hotel and a store of Mr. Atwood had been attempted to be set on fire. I do not recollect of any other. I am aware that some ten or a dozen of the citizens were taken prisoners and kept under guard on the Green at St. Albans on that occasion. I should judge that for some time the party was pretty much in possession of the town. I and Mr. Seymour were in the Directors' room when Mr. Breck came in; I was then standing by the door of the Directors' room, when Mr. Breck came in. Previous to his coming in, the party had possessed themselves of the money of the bank, and were packing up a part of it when he entered. I swear that there were five of the party in the bank when Mr. Breck came in. I swear that Marcus Spurr was in the bank when Breck's money was taken from him. I do not know what countryman Breck is. I think he is a citizen of Vermont, because he has resided there long enough to become one. He keeps a store at St. Albans. I am aware that there was a civil war raging in the United States on the nineteenth of October last, and still is raging there. The Northern people call themselves the United States, and the Southern people call themselves Rebels; I have heard them called the Confederate States of America, that is the name they undertake to assume. Vermont is one of the States forming the Northern section, calling themselves the Northern States. This war has been raging four or five years; during that time the Confederate States have had a President, Senate, and Congress. The States which claim to be part of the Confederate States, are Virginia, North and South Carolina, Georgia, Florida,—Alabama did, but I do not know that she does now,—and a portion of Tennessee. The State of Vermont has contributed money and men towards the carrying on of this war. There was on the said nineteenth of October, a recruiting officer and station—or rather, the municipal authorities recruited men for the Northern army, as they were called upon to do from time to time by the Government. There was no money in our bank belonging to the United States; but there was belonging to the State of Vermont. The party, after leaving St. Albans, were followed by thirty or forty of the citizens. I do not know if they were armed; some of them may have had guns or revolvers; they were not all armed. I do not know who commanded the party. The St. Albans bank joined with the First National bank in offering a reward

for the money, by a placard, one of which is filed. I have seen the term "raid" used pretty often during the war.* I understand that raiding means the march of an army into the enemy's country: by army, I mean a large or a small number of soldiers. I have heard of Colonel Dalghreen and another general making a raid into the Southern territory, in connection with General Kilpatrick. Colonel Dalghreen penetrated very nearly to Richmond. I do not know anything about the number of men he had with him. I have heard that raids have been made into the Confederate territory by Straight, Hunter, Grey, Stoneman, and Grierson; and I have understood that numerous raids have been made into the Northern States by Southern officers. I know a newspaper called the "New York World;" and I also know of a General called Major General Dix. He is in charge of the Eastern department, which includes Vermont. He is a general of the United States of America. I think a proclamation came out on the fourteenth day of this month by General Dix. I have no doubt but that the newspaper now showed to me, being the "New York World," dated the fifteenth of December instant, a copy of which is filed, is the genuine newspaper published in New York; and the proclamation contained in it is the proclamation of General Dix. To the best of my belief, the proclamation is published correctly.† There has not been, to the best of my belief, any application

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* The following is the reward referred to:—"$10,000 Reward.—The St. Albans bank, and the First National bank of St. Albans, Vt., were robbed by an armed band of raiders, on the 19th Oct., 1864, of the following notes and bank bills, viz.: (here follows the description of the notes, and caution against receiving them.)—H. B. Sowles, President St. Albans bank.—Hiram Bellows, President First National Bank.—St. Albans, Vt., October 26, 1864.

† The following is the Proclamation referred to:

Head Quarters, Department of the East,
New York City, December 14th, 1864.

General Orders, No. 97.

Information having been received at these head quarters that the rebel maurauders who were guilty of murder and robbery at St. Albans, have been discharged from arrest, and that other enterprises are actually in preparation in Canada, the Commanding-General deems it due to the people of the frontier towns to adopt the most prompt and efficient measures for the security of their lives and property.

All military commanders on the frontier, are therefore instructed in case further acts of depredation and murder are attempted, whether by marauders, or persons acting under commissions from the rebel authorities at Richmond, to shoot down the depredators if possible while in the commission of their crimes: or if it be necessary with a view to their capture to cross the boundary between the United States and Canada, said commanders are directed to pursue them wherever they may take refuge, and if captured, they are under no circumstances, to be surrendered, but are to be sent to these head quarters for trial and punishment by martial law.

The Major-General commanding this department will not hesitate to exercise to the fullest extent the authority he possesses, under the rules of war exercised

made to the Legislature of Vermont in respect to this money; or that it was before them in any shape or way. I am not aware that there is any newspaper or gazette in the United States specially designated for the publication of official or public documents. The custom is for all leading papers to receive such proclamations alike, and documents also; and this, as I understand it, is the ordinary way in which they are communicated to the public. I do not recollect any instance in which they have been promulgated in any other way. I understand that the President of the United States modified somewhat the orders of General Dix, as appears in the "New York World," of the nineteenth day of December instant, which paper I believe to be a genuine paper, and to have issued on that day, a copy of which is now filed.*

Re-examined.—The prisoner, Marcus Spurr, and the four others who acted in concert with him in the taking of the money from the St. Albans bank, and from the person of the said Samuel Breck, were not in uniform, but, on the contrary, were dressed in civilians' clothes, and so were the rest of the persons who composed the party seen in the streets, to whom I have referred as having ridden off in a northerly direction. These parties, I suppose, came from Canada; but I have no personal knowledge of the fact. When I said that some of the money taken from the St. Albans bank by Spurr and others, belonged to the State of Vermont, I mean to say that they had some money on deposit, and for which the bank became responsible from the moment of its deposit.

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by all civilized States, in regard to persons organizing hostile expeditions within neutral territory, and fleeing to it for an asylum after committing acts of depredation within our own; such an exercise of authority having become indispensable to protect our cities and towns from incendiarism, and our people from robbery and murder.

It is earnestly hoped that the inhabitants of our frontier districts will abstain from all acts of retaliation on account of the outrages committed by rebel marauders, and that the proper measures of redress will be left to the action of the public authorities.

By command of MAJOR-GENERAL DIX.

D. T. VAN BAREN, C.A.A.G.

* The following is the Proclamation:

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, December 17th, 1864.

General Orders, No. 100.

The President of the United States having disapproved of that portion of Department General Order No. 97, current series, which instructs all military commanders on the frontier, in certain cases therein specified, to cross the boundary line between the United States and Canada, and directs pursuit into neutral territory, the said instruction is hereby revoked.

In case, therefore, of any future marauding expedition into our territory from Canada, military commanders on the frontier will report to these headquarters for orders, before crossing the boundary line in pursuit of guilty parties.

By command of MAJOR-GENERAL DIX.

(Official) D. T. VAN BUREN, Col. and A.A.G.

CHARLES O. JOBIEL, Major and Aide-de-camp.

And further deponent saith not; and hath signed, the foregoing deposition having been taken and read over in the presence of the prisoners.

(Signed) CYRUS NEWTON BISHOP.

Sworn before me this twenty-seventh day of December, one thousand eight hundred and sixty-four.

(Signed) J. SMITH, J.S.C.

Joseph F. Bettersworth, of the State of Kentucky, one of the United States of America, now of the city of Montreal, in the District of Montreal, soldier, upon his oath saith:—I have been in Canada about three weeks, part of the time in Toronto, and a part of that time in prison in this city. Upon looking at the prisoners, I say that I know them all; I mean the prisoners calling themselves Bennett H. Young, Charles Moore Swager, Marcus Spurr, William H. Hutchinson, and Squire Turner Teavis, and now before this Court. I have known two of them since last August, that is Young and Spurr; and the others I have formed an acquaintance with in Gaol here. I have been told that the banks of St. Albans aforesaid, were robbed; I cannot say that I know when. Since I have been in Court, I overheard that a person named Samuel Breck was robbed, that is since I came here in Court. I heard from several persons that the banks were robbed. I heard this from Mr. D. Bishop, and some others; I never heard the prisoners say that any man was robbed, nor that the banks had been robbed; they do not admit that it was robbery. The prisoners admitted to me that they had been in St. Albans, and that they had been in the said banks, and that they had taken the money from the banks,—they said the sum they had so taken from the said banks exceeded two hundred thousand dollars. I wish to add that they did not look upon this as robbery. They never told me how many were engaged in this matter. The conversation which took place between the prisoners and myself, and which I have herein before stated, occurred since my arrest, which was last Monday week. The prisoners also stated in my presence, that they had taken some horses from St. Albans. Being asked what they said about the money, they said it was an act of war done in retaliation for the depredations committed in the Shenandoah valley by our enemies. I heard them mention the name of the St. Albans bank and other banks in connection with this matter, and the taking of the money, I believe I heard them say that the raid was made by them in October last, I cannot say the precise day. I was not in St. Albans in the month of October last.

Question.—Do you wish the Court to understand that the five prisoners now present and recognized by you, admitted in your presence that they acted together, and that they aided and assisted each other and in concert with each other, in the taking of the money from the banks of St. Albans and in the other acts committed during the continuance of the raid?

Answer.—I never heard anything of the kind, and do not know whether they acted in concert or not. But they admitted to me that they were at St. Albans on that occasion together. They also admitted to me that they went there together for the purpose of taking the money and burning the town. I also heard the prisoners say, that one man was wounded on that occasion. I heard one or two of the prisoners say that they had revolvers. I do not recollect which said it. I also heard the prisoners say that immediately after the raid, they fled to Canada. They told me that they came from the Confederate army; and I know from circumstances mentioned to me by one of them that he did come from the Confederate army. They did not tell me that they had been in Canada before going to St. Albans, and I have not found out since that they had been in Canada before going to St. Albans. I think I saw two of them in Canada, from the first to the fifth of August last, viz.: Mr. Young and Mr. Spurr. I saw Mr. Young at Toronto, and Mr. Spurr at the Clifton House, Niagara Falls. I did not know them before that time. I was introduced to Young at Toronto, and Spurr at the Clifton House, but not by the same person. I do not know their names. I do not know that Bennett H. Young was engaged in any business in Canada at that time, or Mr. Spurr either. I do not know what their object in visiting Canada was. They did not inform me where they were going. They did not tell me that they expected to be found by some of their friends. I do not know how long they remained in Canada after I was introduced to them. I arrived in Canada for the first time about the first of August last, and remained here until about the twenty-fifth of the same month, when I left Canada. During my stay I spent part of my time at Toronto, and part at the Niagara Falls, Canadian side. I cannot say how long before I left that I saw said Young. I cannot say where he was from the time I saw him in Toronto until I left. I do not know that he was engaged in the study of divinity during his stay at Toronto. He did not appear like a man engaged in such study. I met one Collins also about the same time I had an introduction to Mr. Young; this was one of the persons engaged in the said raid, as I have heard. I have heard this from the prisoners, that he was one of the persons who took part in the raid at St. Albans. I did not know Collins personally before I was introduced to him at Toronto. I do not

recollect having met Collins and Young together. I have not met any of the prisoners, except the two I have mentioned, or any of the others said to be concerned in the raid.

Cross-examined on behalf of the Confederate States.—I am a Confederate soldier; I have served in several States; I belonged to John H Morgan's command, Second Kentucky Cavalry, commanded by Col. Duke at that time. When I saw Spurr and Young at Chicago, during the Convention in August last, I understood that they were there for the purpose of releasing the Confederate prisoners at Camp Douglass; there was an organization going on there for this object at that time. I was told by some of my friends, whom I know to be Confederate soldiers, and also by Young and Spurr, that they, Young and Spurr, were in the Confederate army. I was informed during the time I was in Chicago that a raid or raids was being organized there for the purpose of plundering and burning the Northern towns on the frontier. I am aware that Young and Spurr were then engaged in organizing such raid or raids, that is Young and Spurr were in that organization. I am aware that large quantities of arms and materials of war were stored in Chicago during the month of August last. There is no regular uniform in the Confederate service; if there is, they do not all wear uniforms. It is a fact that in many cases they, the Confederate troops, have gone into battle in United States uniform. In the course of my experience, I have witnesssed the destruction of private property by United States troops. I have been plundered by them myself, being at the time a soldier. I saw a private house burning at Huntsville, Alabama, in 1861, soon after the battle of Shilo. I was under arrest at the time; after my release I was informed by the citizens and soldiers of the United States army that it had been done by General Mitchell's orders. I cannot say that I can state positively that I saw any other instances of destruction of private property, but I have heard of a great many which I know to be true. I saw Collins in Chicago at the same time I saw Young and Spurr. In the course of the conversations I had with the prisoners in Gaol, upon every occasion they told me, that the raid on St. Albans was made with the express orders of the Confederate Government, and further I say not and have signed, the foregoing deposition having been taken and read in the presence of the prisoners.

(Signed) JOSEPH F. BETTERSWORTH.

Sworn before me, at Montreal, this twenty-eighth day of December, 1864.

(Signed) J. SMITH, J.S.C.

Samuel Breck, of the town of St. Albans, in the State of Vermont, one of the United States of America, and now in the city of Montreal, merchant, upon his oath, saith: I have resided in St. Albans over a year, and am a merchant there, doing business with one Jonathan Weatherbee, as co-partners under the firm and name of Breck & Weatherbee, and we were so on the nineteenth day of October last. Upon the said nineteenth day of October, between the hours of three and four of the clock, I proceeded to the St. Albans bank, in the town of St. Albans aforesaid, for the purpose of paying a note that fell due in the bank on that day, by our firm; the amount of the note was five hundred dollars. I had with me three hundred and ninety-three dollars in current money of the United States, and an account due by the President, to complete the payment of the difference. When I arrived at the bank door, I found it closed. I knocked at the door and it was immediately opened by a person who was a stranger to me. I went into the bank, and the door was closed immediately by the same person who had opened it, and who had in his hand a revolver, and with the other hand he caught me by the shoulder, and pushed me along to the desk, and made the remark that the man of the bank was in the other room. As I approached the desk, I was met by another stranger, who had also a revolver in his hand. The money for the payment of the note I carried in my left hand, and upon this latter stranger seeing it, he said I will take that money. Before he took it, Mr. Bishop, a witness examined in this matter, and who was in an adjoining room, said, "Breck, we are caught; you had better give it up," remarking at the same time, that they had robbed the bank of all the money it contained. One of the party thereupon said that they had done so. I only noticed two armed strangers in the bank, the one who opened the door for me, and the one who met me at the desk as aforesaid. After these remarks, I gave to one of the armed men the money I had with me, amounting to three hundred and ninety-three dollars. I gave up this money because I was put in fear of my life if I refused to do so. The man who stood at the desk, and who took the money from me, before taking it, presented a revolver at me, which almost touched my person. I do not recollect that he said he would blow my brains out; I believed he would from his appearance, and from the remark Mr. Bishop made, and from the revolver being presented at me. This man, after he said he would take my money, said that I was under arrest, and that they were Confederate soldiers. I then asked them if they did not respect private property; they said they did not, and asked me if Generals Sherman and Sheridan respected private property. This money which was so taken from me belonged to myself and my co-partner. These armed men were

dressed in civilians' clothes. I did not tell them that the money I held in my hand was private property, nor did I tell them that it was not private property. After taking this money from me, one of the armed men still kept his hand on my shoulder, and aided me into the Director's room, that is, he shoved me in. This armed man said that if I attempted to escape, or give any alarm, he would shoot me. This was the man that took my money from me, his words were that he would blow my brains out; in consequence of this threat, I remained quiet. I was kept in this state for about ten minutes. While I was there, another knock came at the door. The door was opened. A young clerk, or telegraph operator of Mr. Weeks' came in. He had also a package of money in his hand, he made the remark that it belonged to Mr. Weeks, and the same stranger, or armed man that took my money, took his money also. This young man was anxious to get away, and the armed man said, that he should not let the telegraph operator go, and that if he had found him in the telegraph office, he would have shot him on the spot. They compelled him to sit on the bed that was in the room, giving him to understand that if he did not, they would shoot him; and he, in consequence, remained. They remarked that they had seventy-five men in town all armed, and that the town was in their possession, and that they intended to burn the depôt, public buildings, and the Governor's house. Soon after, I heard shots fired below the bank, that is, south of it. Previous to the departure from the bank of the said armed men, one of them soon after went out, and the other remarked that if we were seen outside the bank, we should be shot. He then went out. Mr. Bishop then went out, and I soon after followed, and then saw a party of horsemen riding north. The prisoner, who gives his name as Squire Turner Teavis, I recognize as one of the two armed men who took my money in the way I have already stated, in the St. Albans bank, at the town of St. Albans aforesaid, upon the nineteenth day of October last past.

Cross-examined on behalf of the Confederate States.—I know that there is a paper called the New York Herald, published in the city of New York. I believe it is one of the papers in which Government orders and proclamations are published in the city of New York. General Dix is in command of the department of the East, in which the State of Vermont is. I have seen a proclamation published in the said paper previous to this date, and I presume that the proclamation in the number of the New York Herald of the fifteenth instant, is a copy of the proclamation in question. It appears in the first page of the said paper, and is stated the general order, number ninety-seven. I do not know that there is an official paper in the United States. It is the practice there to publish proclamations and orders in the leading papers. Being asked

whether it was not owing partially to what Mr. Bishop said to me in the bank that you gave up the money to the raiders that asked for it, I say that what Mr. Bishop said to me led me to believe that they were robbers, and that they would shoot me if I did not give it. I say that the prisoner, Teavis, is the man that took my money as aforesaid. I know that money was taken out of the other banks at the town of St. Albans on that day by other raiders or robbers. I style them robbers. I know that there was thrown on the sign of the store next to mine a bottle of what is called Greek fire. They told me that they were Confederate soldiers acting under General Early, and that I was under arrest. The money taken from me consisted of partially St. Albans bank bills, and the rest of greenbacks and other banks; and further I say not, and have signed, the foregoing deposition having been taken and read over in the presence of the prisoners.

(Signed), SAMUEL BRECK.

Sworn to before me, at Montreal, this twenty-eighth day of December, 1864.

(Signed), J. SMITH, J.S.C.

George Edwin Fairchild, of the town of St. Albans, in the State of Vermont, one of the United States of America, clerk, and now in the city of Montreal, upon his oath saith.—I was living in the town of St. Albans aforesaid on the said nineteenth day of October last past. On that day I went out on to the street in St. Albans, between three and four in the afternoon, and saw a party of armed men on horseback in the street. I was some ten or fifteen rods above the St. Albans bank, which is on Main street, of the said town; directly after I went out, one of these armed men went up to a gentleman I was conversing with, named Nettleton, and demanded from him his hat, saying, that he wished to get it for one of his comrades. Mr. Nettleton hesitated a moment, and then remarked, that he could not lose his hat; he then made a second demand for it, saying at the same time that he would shoot him through if he refused, and the same time this man on horseback drew two revolvers, and cocked them, and pointed them at said Nettleton; said Nettleton put his hand under his overcoat as if with the intention of drawing fire-arms; at this, the man on horseback wished to know if he had any arms about him, and to show him the inside of his coat, immediately threatening again to shoot him. At this time the man that was in want of the hat, rode up and said to his comrade not to parley, but to shoot the damned cuss. At this time there was a cry for help down the street, in the vicinity of the banks; these two men wheeled their horses about, and rode off in

the direction of the cry for help. At the time the second man rode up as above stated, I remarked to Mr. Nettleton not to stand such an insult. At this the man that first rode up, pointed two revolvers at me, and wished to know if I had any arms about me, and to show the inside of my coat, or he would shoot me through. I remarked that I hoped he would not shoot an unprotected citizen, opening my coat to convince him that I was unarmed. After these men had ridden down the street in the direction of the cry for help, most of the party rode back up the street nearly opposite to where I was standing, and an order was given from some one of the party to fall in line, which they did as well as they could, and headed down the street, in which direction Captain Conger was coming with a few others. I saw Captain Conger with a gun, which he was apparently trying to fire at them, but the gun did not go off. These that had formed in line and headed down the street, all fired two or three shots each at said Captain Conger and his comrades. About this time there appeared to be one of the robbers who was not mounted; he called upon the Captain, as I supposed, to furnish him with a horse. Upon this the man called upon rode up in front of Fuller's livery stables, and demanded Mr. Fuller's saddler to lead down a horse that had just been rode into town by a Mr. Smith, and was then standing in front of the livery stables. The man hesitated at first; and the man who rode up, and demanded the horse, told him that if he did not comply he would shoot him. Upon this the saddler led the horse down. This man had a revolver in his hand which was cocked, and which he presented at the saddler. The armed man rode by the side of the said saddler, keeping the revolver pointed at him most of the time until he came nearly opposite to where I was standing, and where the man in want of a horse was standing; this man mounted the horse and rode off with the party. At this time there was an order given by some one of the armed party to throw Greek fire upon a building opposite where I was standing; by this time the horses became unmanageable from fright probably, and the armed party fired several shots at citizens in different directions. Some of the shots striking very near where I was standing, one struck the corner of the store about six feet from where I stood, and I saw the ball which was picked up by a gentleman standing near; they then rode out of town irregularly, and that is the last I saw of them. This armed party appeared to be acting in concert from the time I first saw them until they rode off; they were all dressed in citizens' clothes, and I saw nothing about them to indicate that they were soldiers. The prisoners, Bennett H. Young, and Charles Moore Swager, I recognize as being two of the armed party that I have referred to. All that I have related took place on Main street, in the town of St. Albans aforesaid, and in the immediate vicinity of the banks.

Cross-examined on behalf of the Confederate States.—I did not see Greek fire thrown, but I heard the order given to do so on Mr. Brainheard's store. There were other buildings set fire to that day,—the American hotel, and Victor Atwood's hardware store. When Captain Conger came up with the gun, there were four or five people with him, and by that time the citizens were beginning to collect in the street. There are about three thousand inhabitants in St. Albans. At that time the armed party had been in the town about half an hour. By this time a great number of the inhabitants had collected, but I cannot say that the greater portion, as precautions were taken to prevent this, by the armed party. At that time they had several of the principal citizens prisoners on the green. Up to this time they had pretty much the control of the village, and did much what they had a mind to. I do not know that any one was shot by the volleys I saw fired. I know that there was a soldier of the United States army in St. Albans that day; he was in uniform. He was not taken prisoner by the armed party; and further I say not, and have signed, the foregoing deposition having been taken and read in the presence of the prisoners.

(Signed) GEO. E. FAIRCHILD.

Sworn to before me, at Montreal, this twenty-eighth day of December, 1864.

(Signed) J. SMITH, J.S.C.

Edward A. Sowles, of the town of St. Albans, in the State of Vermont, one of the United States of America, attorney and counsel-at-law, now in the city of Montreal, upon his oath saith:—I am an attorney and counsel-at-law, practicing as such in Vermont aforesaid, and have practiced as such since the year eighteen hundred and fifty-eight. I have been present and have heard all the evidence in this case.

Question.—From the facts deposed to in your presence and hearing in this case by Cyrus Newton Bishop, Samuel Breck, Joseph T. Bettersworth, and George E. Fairchild, what criminal offence, in your opinion, was committed, according to the laws of the said State of Vermont in force on the said nineteenth day of October last, as therein disclosed by the said witnesses?

(Objected to by Mr. Kerr. Objection maintained.)

Question.—Was robbery a crime by the laws of the said State of Vermont in force on the said nineteenth day of October last?

Answer.—It was, and still is.

Question.—Did the facts disclosed in the evidence of the witnesses above named, as given in this cause in your presence and hearing, amount to and constitute the crime of robbery, as known

and recognized by the laws of the said State of Vermont in force on the said nineteenth day of October last?

Answer.—They did, and do now.

Question.—According to the laws of the said State of Vermont in force on the said nineteenth day of October last, would the facts disclosed in the said evidence bring home the charge of robbery against all of the prisoners above named?

Answer.—It would. The volume now produced contains the general Statutes now in force in the said State of Vermont, and which were also in force on the said nineteenth day of October last. I am acquainted with the seal of the said State, and with the signatures of the Governor and Secretary of the said State, and I declare that the seal affixed to the certificate written on the leaf immediately after the page seven hundred and ninety, and between the Acts and the index, is the seal of the said State, and the signature, "J. Gregory Smith," is the signature of the Governor of the said State, and the signature, "G. W. Bailey, jun.," is the signature of the Secretary of State of the said State of Vermont.

Cross-examined on behalf of the Confederate States.—The offence committed by the prisoners would be cognizable by the Courts of the State Courts of the State of Vermont. The United States Courts for the District of Vermont would have no primary jurisdiction over this offence. The State of Vermont, therefore, has exclusive primary jurisdiction of the crime of robbery committed in that State, as I understand it. Texas, California, Kansas, I think, and Minnesota, have been admitted into the Union since the year eighteen hundred and forty-two. I know that an Act of Congress was passed on the seventeenth of July, eighteen hundred and sixty-two, chapter one hundred and ninety-five, entitled an Act to suppress insurrection, and to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes that Act shows for itself; that any person engaged in war, or committing the crime of treason against the said United States, is liable to imprisonment and fine, and the property of that individual is liable to confiscation to satisfy the fine, both real and personal property. I refer for explanation of the said Act to the copy of the Act printed in "Lawrence Wheaton on International Law," pages 600, 601, and 602, which I have no doubt is a true copy.

Question.—In your opinion, should a detachment of United States soldiers, under the command of an officer in your army, do like acts to those charged against the prisoners, your said soldiers and officers being then in Georgia, would they be guilty of robbery?

(Objected to by Mr. Devlin. Objection overruled.)

Answer.—I think not. Georgia is a State in rebellion against the constituted authorities of the United States. War is going on

now in the State of Georgia. The Federal and so-called Confederate armies are now in the State of Georgia, and that is the battle-ground, or part of the battle-ground. The State of Vermont is not in rebellion against the authorities of the United States, but is a loyal State. Its citizens are not committing acts of treason. Many of those of Georgia are so doing. The two cases are not analogous. I consider the act of the prisoners as an act of robbery. I do not consider it an act of treason against the State of Vermont.

Question.—Do you consider the conduct of the prisoners, and the other parties, at the town of St. Albans, on the nineteenth of October last, taking all their acts and declarations together, as treason against the United States?

(Objected to by Mr. Devlin. Objection overruled.)

Answer.—I can only answer that question by giving the definition of treason, as given by the Constitution of the United States, that is to say, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies," &c., as will be found by reference to page eleven of the compiled Statutes of the State of Vermont.

Question.—Do the acts above referred to, and declarations, amount to a levying of war against the United States?

Answer.—That is a matter of opinion. In my opinion, they do not.

Question.—Do the said acts and declarations amount to an adherence to the enemies of the United States, giving them aid and comfort?

Answer.—That question, with other similar questions, may not have been settled by the Courts of the State of Vermont, and I should prefer having them settled by those Courts before giving an opinion. I am aware that Judge Nelson is a Judge of the Supreme Court of the United States. I think Judge Shipman is also. I have seen the work called "The Rebellion Record," published by G. P. Putnam, and I have seen it alluded to frequently in the papers, and is apparently the same work which was read, or portions of which were read, in Court as evidence, on the trial of the officers and crew of schooner "Savannah." In the Courts of Vermont I have seen like works excluded as evidence; that is, evidence in and of themselves. I know General Phelps, who at one time commanded at New Orleans; that is, I know him by reputation, and have seen him. He is from Vermont.

Question.—In your opinion, Breck having paid the amount of money he had at the time to a person in charge of the bank, at the request, or by the direction of the cashier, is he still responsible for the said amount to the bank?

Answer.—Having given up the money, under the circumstances, not to an agent of the bank, he would be liable to the bank. And further I say not, and have signed, the foregoing depositions having been taken and read in the presence of the prisoners.

(Signed) EDWARD A. SOWLES.

Sworn to before me, at Montreal, this twenty-ninth day of December, 1864.

(Signed) J. SMITH, J.S.C.

Mr. Bethune.—This is our last witness.

Mr. Kerr.—I have a point to submit as to the jurisdiction of the Court. But as I was not aware last evening that the counsel for the prosecution would have finished so soon, I shall be ready to-morrow morning with my argument as to the jurisdiction.

Friday, 30th Dec., 1864.

Mr Kerr for the prisoners submitted:

1. That the Province of Canada was but a corporation with powers limited and defined by Imp. Act, 3rd and 4th Vic., cap. 35, the third clause of which was in the following terms.

From and after the re-union of the said two Provinces, there shall be within the Province of Canada one Legislative Council and one Assembly, to be severally constituted and composed in the manner hereinafter prescribed, which shall be called "The Legislative Council and Assembly of Canada;" and within the Province of Canada, Her Majesty shall have power, by and with the advice and consent of the said Legislative Council and Assembly, to make laws for the peace, welfare and good government of the Province of Canada, such laws not being repugnant to this Act, or to such parts of the said Act, passed in the thirty-first year of the Reign of His said late Majesty, as are not hereby repealed, or to any Act of Parliament made or to be made, and not hereby repealed, which does or shall, by express enactment or by necessary intendment, extend to the Provinces of Upper and Lower Canada, or to either of them, or to the Province of Canada, and that all such laws being passed by the said Legislative Council and Assembly, and assented to by Her Majesty, or assented to in Her Majesty's name by the Governor of the Province of Canada, shall be valid and binding to all intents and purposes within the Province of Canada.

2. The conditions precedent then to the validity of Provincial Statutes, were: first, that they should be for the peace, welfare and good government of the Province; second, that they should not be repugnant to the provisions of any Imp. Act then in force, or which thereafter might be passed.

3. By the 10th article of the treaty of 1842, between Great

Britain and the United States, it was provided that extradition of criminals in certain cases should be made, and the powers contracting pledged themselves to vest jurisdiction in their Judges and their Magistrates respectively.

4. The Imp. Act, 6th and 7th Vic., cap. 76, was then passed for the purpose of giving effect to the treaty; and the Judges and other Magistrates in Canada, were thereby invested with the power of issuing warrants to apprehend and immediately upon the issue of the Governor General's warrant giving information that a requisition for extradition had been made.

5. Previous to the passing of the 6th and 7th Vic., cap 76, no Judge or Magistrate had a right to issue his warrant to apprehend a foreigner for a crime committed in the United States.

6. By the 5th Section of the 6th and 7th Vic., cap. 76, it was provided; "that if by any law or ordinance thereafter made by the Local Legislature of any British colony or possession abroad, provision shall be made for carrying into complete effect within such colony or possession, the objects of the said Act by the substitution of some other enactment in lieu thereof, then Her Majesty might with the advice of Her Privy Council (if to Her Majesty in Council it seems meet but not otherwise) suspend within any such colony or possession, the operation of the said act of the Imp. Parliament, so long as such substituted enactment continues in force there, and no longer."

7. The 12th Vic., cap. 19, was passed by the Provincial Parliament of Canada, under and by virtue of the permission and power given in the said 5th Section of the 6th and 7th Vic., cap. 76; and in the early part of 1850, Her Majesty by order in Council suspended the operation of the Imp. Act in Canada, so long as the said 12th Vic., cap. 19, should be in force and no longer.

8. By the 12th Vic., cap. 19, the necessity for the Governor's warrant preceding the issue of a warrant by a judge or magistrate, was done away with, and any one of the Judges or Justices of the Peace throughout the Province, was authorized to issue such warrant to examine witnesses and upon complaint under oath or affirmation being made, the words and spirit of the treaty being therein carefully preserved.

9. By the 5th clause of the 12th Vic., (the enactment being composed of five clauses only) it was provided that "this Act shall continue in force during the continuance of the tenth article of the said treaty, and no longer."

10. Under and by virtue then of the 5th clause of the 6th and 7th Vic., cap. 76, and the order in Council of Her Majesty, the 12th Vic., cap. 19, became and was the colonial *enactment* substituted in Canada, for that Imp. Act, and the operation of the Imp. Act

was suspended in the Province, so long as that enactment (the 12th Vic., cap. 19), remained in force and no longer—the fifth clause of the Statute 12th Vic., must also be regarded as a kind of pledge *quoad* the duration of the act itself.

11. By the Provincial Act, 22nd Vic., cap. 29, it was provided "that from the day mentioned in the proclamation provided for by section four, all the enactments in the several Acts and parts of Acts in such amended Schedule A mentioned as repealed, shall stand and be repealed; by the 9th Section, it was provided "that if the provisions of the Consolidated Statutes are not the same as those of the repealed acts *quoad* transactions after those Consolidated Statutes come into effect, the provisions of the Consolidated Statute shall prevail."

12. In Schedule A (Con. Stat. of Canada, p. 1203) appears as repealed 12th Vic., cap. 19.

13. The Governor General issued his proclamation on the 9th Nov., 1859, fixing the 5th of Dec. as the day on which the Consolidated Statutes of Canada, should come into force under the 4th Section, 22nd Vic., cap. 29.

14. The 22nd Vic., cap. 89, (Consolidated Statutes of Canada) was a re-enactment of the 12th Vic., cap. 19.

15. By the Provincial Statute, 24th Vic., cap. 6, the first three clauses of the 22nd Vic., cap. 89, were repealed—and three other clauses substituted therefor. By the 24th Vic., jurisdiction in cases of extradition was taken away from the Justices of the Peace throughout the Province, and vested in certain other officials—the words in the first section of the 22nd Vic., cap. 89, "with having committed within the jurisdiction of the United States of America, or of any of such States, any of the crimes, &c.," were changed to "with having committed within the jurisdiction of the United States of America, any of the crimes, &c.," and other changes were made relating to the sufficiency of the evidence.

16. No order of Her Majesty in Council suspending the operation of the Imp. Act during the continuance in force of the 24th Vic., cap. 6, was ever made.

17. By the repealing clause of the 24th Vic., cap. 6, three of the five clauses composing the 22nd Vic., cap. 89, (the re-enactment of the 12th Vic., cap. 19,) were repealed, leaving in fact but one clause, which was similar to one of the clauses of the Imp. Act, 6th and 7th Vic., cap. 76, so that the enactment substituted (the whole of the Act 12th Vic., cap. 19) had ceased to be in force, and the Imp. Act 6th and 7th Vic., cap. 76, under its own provisions and Her Majesty's order in Council, on the assent by the Governor General to the 24th Vic., cap. 6, revised.

Mr. Bethune contended that our legislature had full power to legislate upon this subject irrespective of any treaty or imperial

statute bearing on the point. He had referred to the Union Act as demonstrating the power of our legislature, which he had thought proper to designate a mere corporation. The wording of the act was this:—"That this legislature shall have power to make laws for the peace, welfare and good government of the Province of Canada." This has the largest possible form of expression on the subject. To show this power was inherent in our legislature, he referred to what the legislature of Upper Canada did, before the Union, on this subject, and cited from the Revised Statutes of Upper Canada, p. 592. But, first, the question of extradition had nothing to do with treaties. A treaty was a mutual compact between two nations, and, of course, required the interposition of the Crown and the Crown alone. In a mere question of extradition the legislature of this province was supreme. In 1833, the legislature of Upper Canada, long before any treaty, legislated upon this subject, and in a broader sense than that of the treaty. The act set forth that, whereas, it was expedient to provide by law for the apprehending and delivering up of felons and malefactors who, having committed crimes in foreign countries have sought, or may, hereafter, seek an asylum in this province it was enacted not only that persons committing such crimes as murder and robbery, arson, &c., might be given up, but those guilty of "larceny or other crimes." Were we to be told this was an unconstitutional act—an act in force ever since 1833? It stands on our statutes ratified by the Crown and recognised as law. In Wheaton's International law, p. 241, it is recorded, that it was stated by the British Minister at the time of the signature of the treaty of 1842, that the Rendition Treaty could have no effect in the British dominions in Europe, till provisions were passed to give it effect; but that in Canada the treaty could have immediate effect, because in Upper Canada there existed a provision of law touching this very question. The wording of the old Quebec Act giving the legislature of Upper Canada the most ample power to "legislate on every subject affecting the peace, welfare and good government of the Province," the legislature passing its statute in accordance with that power. The statute was recognised by Great Britain through its ambassador negotiating the treaty. The Imperial Act respecting this treaty afforded a confirmation of this view. That Act, in referring to our power on this subject did not refer to any power as being thereby given us, but to a power already existing at the passing of the said Imperial Act. The wording of that Act took it for granted that such a power really existed with us, and it provided that it should be competent to Her Majesty to suspend the Imperial Act—not that it should be obligatory upon her to do so. It must be borne in mind that the Crown was under treaty of obligations with an-

other nation, and that it was necessary for the Crown, in good faith, to take care that all our obligations were carried out faithfully. If the legislature of this colony did not legislate sufficiently in the matter, the Imperial Parliament could always step in and supply all deficiency so as to answer fully the purposes of the treaty. The Imperial Legislature reserved to itself the right to see the colonial enactment before it would suspend its own enactment. There was nothing illegal or improper in the Provincial and Imperial enactments going on together; on the contrary, they contemplated such a state of things. We passed an act in 1849, but it did not require any sanction from Her Majesty in order to make it law. As the act created a machinery of our own, for the sake of convenience, our legislature left it to Her Majesty to indicate a day upon which this treaty should come in force, in order that if she thought proper to suspend the operation of the Imperial Statute, there should be no confusion, and that we should always, or in the meantime have some law in operation. What was the language of Her Majesty, as appeared by the *Canada Gazette?* "By virtue of the authority vested in me by the Provincial Act"—the act of 1849 passed by our legislature. This was not surely the authority of a mere Corporation. Her Majesty's power of suspension existed as long only as our statute existed. As to the argument that the Imperial Act revived on the repeal of the statute of 1849, the clause Mr. Kerr relied on was the 5th of the Act, respecting the Consolidated Statute of Canada, 22nd Vic., chapter 29. The clause provided that on and after such day as that on which the Provincial Act should come into force and effect, by direction of the Consolidated Statutes of Canada, etc., all the enactments and parts of enactments mentioned in a certain schedule should stand and be repealed, "save only as hereinafter provided." Now, as to the argument that because the 12th Vic., chapter 19, was embodied in that schedule that it was therefore repealed, and that when the Act 12th Vic., was embodied in the Consolidated Statutes, a new statute was created, it is to be noted, in connection with the words "save only as hereinafter provided." That the 8th section of the Consolidated Statutes enacted that said Consolidated Statutes should not be held to operate as a new law, "but as a consolidation, and as declaratory of the laws contained in the acts so repealed, and for which the Consolidated Acts were substituted." Her Majesty had no power to do any thing more than deal with the whole Act. She had declared that the Imperial Act would be suspended as long as the Provincial continued in force, and no longer. But was it to be argued that when an act was amended by the legislature it was consequently repealed. The Act of 1849 still exists on our Statute Book, as amended, but amended in a very small particular. Upon

the question as to the jurisdiction of our Courts it was amended in only one particular as to the powers of justices of the peace in the matter. In the statute of 1861, we had merely approached nearer to the Imperial Act, restricting the power given under that law, by taking it away from mere justices of the peace, and giving it in lieu to judges of sessions, and stipendiary magistrates. There could be no revival of the Imperial Act unless the whole Act of 1849 had been repealed by us, which had not taken place, it being still in the Statute Book, and but slightly amended. Her Majesty giving such a sanction, required no special aid or order in Council to be proclaimed in the *Gazette* to give the statute life. Our legislature in the Act of 1849 merely gave the Queen power to fix a day on which our Act should come into force so that there might be no clashing of the two Acts, but in the Statute of 1861 no requirement of the kind was introduced. Was it to be said that when the legislature had power to enact it had no power to amend or repeal laws? Our Act of 1861 did not require any confirmation at Her Majesty's hands. She had power to reserve it, but did not do so. The only other power she had as regards that act, was to disallow it; but instead of doing so, Her Majesty treating it as an ordinary act by an order made in Her Privy Council declared that she left it to its operation. He denied His Honor had any power to question the constitutionality of the Act, under which he was sitting in this case. The law was in the Statute Book, and the Judge had no power to say the legislature of Canada had no right to pass a law on this subject. Our legislature had the most complete power and control over this question and required no treaty even in the first instance. It was, then, out of the Court's power to set aside an act of Parliament which gave it jurisdiction in this matter. It could not be maintained that even if the Imperial Act had revived, the two could not exist and operate together. Even if the Imperial Statute has revived, enacting that the Governor General might sign a warrant of arrest in such a case as this, was it to be understood that no other official could do anything towards securing the arrest of accused parties in such a matter?

Justice Smith delivered the following judgment on Saturday, 7th January, 1865:

The examination of the witnesses in the case of the robbery of Brett, having been concluded, Mr. Kerr, on behalf of the prisoner, raised a preliminary objection, on the allegation of the total absence of jurisdiction on the part of the examining Judge, on the ground that the arrest of the prisoner was illegal, the warrant of arrest not having been preceded by a warrant under the hand and seal of the Governor General, signifying that a requisition had been made by the authority of the United States for the delivery of the offender.

"That my warrant having been issued without such authority, it was altogether illegal, null, and void, and that the prisoner was entitled to his discharge."

"The argument was, that there was no law in force in this Province, under which such warrant could legally issue, except the Imperial Statute 6th and 7th Victoria, chapter 76; and that such law imperatively required the authority of the Governor General, before such arrest could be made, and that without such authority the warrant of arrest was altogether illegal.

"In support of this argument, the Counsel for the prisoner stated several propositions.

1st. That the arrest and delivering up of persons accused of crimes, was entirely within the scope of Imperial authority, and beyond the jurisdiction of a Colonial Executive.

2nd. That there was no provision by common law, or by the comity of nations, to effect this object.

3rd. That this matter is regulated entirely by treaty, between independent nations, and that the only treaty which regulated this subject between Great Britain and the United States of America, is the Ashburton Treaty.

Let us assume then, for the sake of argument, that the three propositions above stated are true, and that the provisions of the Ashburton Treaty can alone settle and determine the rights of both nations, on the subject,—and that the starting point in the settlement of the question is that treaty.

The Ashburton Treaty was finally settled by the two Governments on the 30th day of October, 1842, by the exchange of Ratifications at London.

By the tenth article of this treaty, it was agreed, "That Her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons, who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum or should be found within the territory of the other."

Provided that this should only be done, upon such evidence of criminality, as, according to the laws of the place where the fugitive, or person so charged should be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed. And that the respective Judges and other Magistrates of the two Governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that

he might be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality might be heard and considered; and that, if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining Judge or Magistrate to certify the same, &c., &c., &c.

An Act was afterwards passed in the Imperial Parliament to give effect to the treaty in the 6th and 7th years of Her Majesty's reign; and by one of the clauses of that Act,

It was provided, "That before the arrest of any such offender, a warrant shall issue under the hand and seal of the Governor General, or person administering the government, to signify that such an application had been made by the United States for the delivery of such offender, and to require all Justices of the Peace and other Magistrates and officers of justice to govern themselves accordingly.

By the fifth section of the said Imperial Act, it is provided, that if by any law or ordonnance, to be thereafter made by the local Legislature of any British colony or possession abroad, provision shall be made for carrying into complete effect within such colony or possession the objects of the said Act (that is) for giving effect to a treaty between Her Majesty and the United States of America, for the apprehension of certain offenders, by the substitution of some other enactment in lieu thereof, then Her Majesty may, with the advice of Her Privy Council (if to Her Majesty in Council it seems meet), suspend within any such colony or possession the operation of the said Act of the Imperial Parliament, so long as such substituted enactment continues in force therein, and no longer.

Under the authority of the fifth section of this Act, the Parliament of Canada passed an Act intituled "An Act respecting the Treaty between Her Majesty and the United States of America for the apprehension and surrender of certain offenders," being the 12th Victoria, chapter 19.

By this Act it was stated in the preamble, "that the provisions of the Imperial Statute were found to be inconvenient in this Province in practice, particularly in that part which required the authority of the Governor General before any arrest of a criminal could be made; and whereas, by the fifth section of this Imperial Act, it is enacted that if by any law or ordonnance, to be thereafter made by the local legislature of any British colony or possession, provision shall be made for carrying into complete effect the objects of the said Act, by the substitution of some other enactment in lieu thereof, Her Majesty might, with the consent of Her Privy Council, if to Her Majesty in Council it seems meet, suspend the operation of the Imperial Statute so long as such substituted enactment con-

tinue in force, and no longer;" and then follows the enactments of the bill doing away with the necessity of the Governor General's warrant.

By the 5th clause of the said Act it was provided that the Act 12th Victoria, chapter 19, shall come into force upon the day to be appointed for that purpose, in any proclamation to be issued by the Governor General, or person administering the Government of the Province, for the purpose of promulgating any order of Her Majesty, with the advice of Her Privy Council, suspending the operation of the Imperial Act hereinbefore cited, within this Province, and not before; and this Act shall continue in force during the continuation of the 10th Article of the Province, and no longer.

This proclamation was made by the Governor General on the 28th March, 1850, and was published in the *Canada Gazette* at that time.

The order in Council required by the fifth clause of the 6th and 7th Victoria, Imperial Act was passed, and the operation and authority of the Imperial Statute 6th and 7th Victoria was therefore suspended within the limits of this Province, and the 12th Victoria, chapter 19, became the law of the Province.

The effect, therefore, of the passing of the 12th Victoria, chapter 19, was to carry out more completely the stipulations of the treaty. By the 10th article of that treaty, jurisdiction was given to the Judges and Magistrates mentioned in the treaty. By the Imperial Act 6th and 7th Victoria, it was enacted that before these Judges or Magistrates could act under the treaty, an authority from the Governor General was necessary,—so far as this is concerned it was a departure from the stipulation of the 10th Article. Suppose the 6th and 7th Imperial Statute had enacted that the warrant by a Judge or Magistrate could not be enforced, except a previous warrant had been issued under the hand and seal of the principal Secretary of State, surely it would not be contended that such an enactment would not have been contrary to the provisions of the treaty, and that it would have frustrated the very object of the treaty so far as this country is concerned; what possible difference can it make that the name of the Governor General is substituted for that of the Secretary of State, so far as mere convenience is concerned? The Governor General, who resides at the distance of one thousand miles from the Western extremity of the Province, and the Secretary of State who resides in England, are in a similar position; and the preamble of the 12th Victoria, chapter 19, declares that the provisions of the Imperial Statute have been found inconvenient in practice in the country, and that it is necessary to change them.

This Act, so reasonable in that particular, was passed without objection, and it was not even a reserved Act. It was passed

by the concurrent action of the three branches of the Legislature of Canada, and became complete, so soon as the Royal assent through the Governor General had been given.

But the time for this act to come into force was left to the Governor General to proclaim, so soon as the 6th and 7th Victoria (Imperial Act) should have been suspended, and was only necessary for that purpose ; and as it was enacted in the 12th Victoria, chapter 19, the proclamation announcing the suspension also became necessary.

But the Act itself was passed as an ordinary act of Parliament, and passed as the Act itself says by virtue of the authority given to the Parliament by the fifth clause of the 6th and 7th Victoria.

The jurisdiction over the subject matter of the Imperial Act, and of the treaty itself in so far as the mode of carrying out the provisions of the treaty within the Province, is concerned, was given to this country, and it fell by the operation of the Imperial Act, under the ordinary jurisdiction of the Canadian Parliament, as all other matters of a local nature fell under the jurisdiction of Canada, by the Union Act itself.

The mere fact that the 6th and 7th Victoria was a separate Act, and provided for its coming into force again, in the event of this country not carrying out the provisions of the Ashburton Treaty by enactments of its own, does not affect the question.

The Union Act gave complete and supreme authority over all matters concerning this Province to the Parliament of Canada.

The Act of 6th and 7th Victoria gave complete jurisdiction to this country over the provisions of the Ashburton Treaty, so far as it related to this country, and to the mode of carrying into effect the provisions of the treaty itself within the territory of Canada. There was no limitation to this authority by the Act itself. It was enacted that the mode of carrying into effect the treaty should be regulated by the Provincial Government, and if from the nature of the treaty itself, it could only come into force by Imperial authority, the 10th article of the treaty clearly embraced the whole of the dominions of Great Britain, and vested in the Judges and Magistrates of the two countries all necessary jurisdiction, and authority for arresting and examining the offenders mentioned in the said treaty. So far as mere jurisdiction is concerned, it was absolutely given by the treaty, and the Imperial Act in that respect confirmed this jurisdiction. The Ashburton Treaty was passed by the Imperial Govornment for the whole nation, and for that purpose the Imperial authority was supreme.

By the express provisions of the treaty itself, jurisdiction was given to the Judges and Magistrates of the Province, the consent to this jurisdiction was given by the Crown: 1st. By the ratifica-

tion of the treaty. 2nd. By the legislative action contained in the provisions of the 6th and 7th Victoria, with the already mentioned restriction of the Governor General's warrant; and, 3rd, by the provisions of the 12th Victoria, chapter 19, expressly doing away with this restriction; and so far as the surrender by the country of persons charged with offences specially pointed out in the treaty, the jurisdiction was complete. Even if the 6th and 7th Victoria had never been passed, it is difficult to conceive on what authority this country could have refused to carry out the provisions of the Ashburton Treaty.

But it is not necessary for me to pursue this point any further, as the full and complete jurisdiction was given to this country by the Act 6th and 7th Victoria, and by 12th Victoria, chap. 19, so far as to the manner of effectually carrying out the provisions of the treaty is concerned.

I deduce, therefore, from the previous observations:

1st. That supreme authority was given to the Parliament of this country to effectually carry out the provisions of the Ashburton Treaty within the limits of our territory, as it thought proper, and that this authority is to be found in the fifth clause of the 6th and 7th Victoria, Imperial Act.

2nd. That by the passing of the 12th Victoria, chap. 19, the mode of carrying out the provisions of the treaty is there pointed out.

3rd. That so long as the provisions of the 12th Victoria, chap. 19, remained in force, the provisions of the 6th and 7th Victoria were suspended in this country.

4th. That the 12th Victoria, chap. 19, having received the Royal assent, the right to change the mode of procedure pointed out, to be observed by the 6th and 7th Victoria, and the substitution therefor of the mode of procedure pointed out by the 12th Victoria, chap. 19, was an Act clearly within the jurisdiction of this country, otherwise that Act would never have received the Royal assent.

5th. That if the mode of procedure can be changed with the sanction of the Crown, any second change not infringing the provisions of the treaty is also within our jurisdiction, and that the same authority having sanctioned this change, it is absolutely binding on all the inhabitants of this country.

The prisoners' counsel, however, contends that as the 12th Victoria, chap 19, is no longer in existence, that it has been positively repealed, and that, consequently, the Imperial Act of the 6th and 7th Victoria again revived, and became law in this Province.

The argument is, that the 12th Victoria, chap. 19, has been changed by the 24th Victoria, in such a way as to require a second order in Council, and a second proclamation to give it effect.

That as the 12th Victoria, chap. 19, required a Proclamation and Order in Council to suspend the 6th and 7th Victoria in this country, so, also the 24th Victoria also required a second Order in Council again suspending the 6th and 7th Victoria, and a Proclamation to that effect.

In answer to this argument, it may be said that the 24th Victoria does not repeal the 12th Victoria, chap. 19 ; it simply substitutes three new sections, viz. : 1, 2, 3, for the 1, 2, 3 sections of the 12th Victoria, chap. 19.

That the change in part of the said Act does not operate in law as a repeal—See Dwarris, page 534 and 535.

That the 6th and 7th Victoria does not speak of a repeal or change at all, but simply states that in the event of this Parliament making provision for the carrying into complete effect within this colony the objects of the said Act, by the substitution of some other enactment in lieu therefor, that is, in lieu of the enactments contained in the 6th and 7th Victoria, then the operation of the 6th and 7th Victoria may be suspended.

The 12th Victoria was passed substituting new enactments for those of the 6th and 7th Victoria, and received the Royal assent, and the operation of the 6th and 7th Victoria, in this country was suspended, and remained suspended so long as such substituted enactments remain in force.

The moment then, that the colonial amendments were substituted, for the Imperial provisions contained in the 6th and 7th Victoria, the colonial law necessarily superseded the Imperial authority.

The Imperial Act 6th and 7th Victoria does not restrain the Provincial Parliament in any way in the mode of carrying out the provisions of that Act, viz. : to carry into complete effect the Ashburton Treaty ; and the same Act gave to the Colonial Parliament the same authority in this country that it had itself, and delegated to the Canadian Parliament the duty it had itself assumed towards the United States within the Province of Canada, viz. : to carry out the stipulations of the Ashburton Treaty, and it consequently fell under the ordinary jurisdiction of the Canadian Parliament, as all other matters of local concern under the Union Act.

If the Canadian Parliament had a right, therefore, to deal with the subject at all, it had a right to amend its own Acts in that particular.

I think it will scarcely be denied that if the right to legislate upon any particular subject exists, that it includes the right to amend its own Acts. Now the 24th Victoria was a mere amending Act, and was assented to in the same manner as all other Acts of Parliament were.

It was not even a reserved Act. The same authority which assented to the 12th Victoria, assented to the 24th Victoria, in so

far as the inhabitants of this colony are concerned, and all Magistrates and Judges are bound by it. As well might it be pretended that any other law in the Statute Book is illegal, as to say the 24th Victoria is not the law of the land.

It was in fact doing what the 6th and 7th Victoria authorised the Parliament to do, namely, to substitute Canadian enactments for Imperial ones, thereby the more effectually to carry out the provisions of the Ashburton Treaty.

It was to do what by the fifth section of 6th and 7th Victoria this country was authorised and empowered to do, and the effect was, as then stated, to suspend the operation of the 6th and 7th Victoria, so long as any substituted enactments existed in the country for carrying out that Act, and by this law, 24th Victoria, no proclamation and no Order in Council were necessary. It was not necessary by the treaty, and the Order in Council was only necessary by the Act of 6th and 7th to declare the suspension of the Imperial Act.

If no such Order in Council had been made, the local Act would not have had the less force. It was the enacting clauses which declared the suspension of the Imperial Statute, so soon as a Canadian Act was passed, and from the moment the 12th Victoria, chap. 19, became law, the Imperial Act was virtually suspended.

It was a mere form generally used in matters of State, and the usual mode of making known the suspension of any law. But in no way was it necessary to make or complete a law. So far as regards the proclamation, it was not necessary to make the law, but merely to announce the time of its coming into force, as it was provided by the 12th Victoria, chap. 19.

However, as regards the 24th Victoria, there was an Order in Council, but it was solely to say that the Act 24th Victoria was left to its operation, and to intimate that the Act would not be disallowed within the two years pointed out by the Union Act. Now, would such an Order in Council have been passed if it had been for a moment considered, that the mere amendment of the 12th Victoria, chap. 19, had or could have had the effect of again reviving and bringing into force the 6th and 7th Victoria.

The members of the Council and the law officers of the Crown, whose attention was particularly drawn to the provisions of that law by the then Secretary of State for the Colonies, the late Duke of Newcastle, would not have fallen into such a blunder as to advise her Majesty to leave the 24th Victoria to its operation, if thereby the 6th and 7th Victoria would have again come in force.

The result would have been that two laws on the same subject would have existed, repugnant and antagonistic in their nature, which would have nullified each other, and the Ashburton Treaty

itself, the one declaring that the warrant of the Governor General was necessary, and the other affirming that it was not, and both sanctioned by the same authority, viz.: the Queen in Council. It is impossible to suppose that if such had been the effect of passing the 24th Victoria, so great an embarrassment would not have been avoided.

The Order in Council, insead of leaving the law of the 24th Victoria to its operation, would have advised her Majesty to have disallowed the Act.

The Imperial authorities considered, therefore, that the enactments of the 24th Victoria, chap. 6, fully carried out the provisions of the 6th and 7th Victoria, by substituting the enactments required to suspend the operation of the 6th and 7th Victoria, in this country, and so long as these enactments existed, the 24th Victoria was the law of the land. The argument that the Act of the 12th Victoria was repealed by the Consolidated Statutes of Canada cannot affect the question, for the 24th Victoria was substituted for the 12th Victoria, with all necessary enactments required by the Imperial Statute 6th and 7th Victoria, to give effect to the law.

The very terms of the Order in Council on the subject of the 24th Victoria, clearly indicated that the Imperial authorities considered that the subject was exclusively within the jurisdiction of the Canadian Parliament; for the words used in the Order in Council, viz:—That the 24th Victoria should be left to its operation, simply according to Dwarris, pages 90-7-8-9, that it, the law, is an affair of an ordinary and local nature.

If a second Order in Council had been necessary, according to the argument of the Counsel for the prisoner, although not required by the act itself, such a pretension must clearly rest on the assertion that a mere Order in Council and a proclamation have greater power and force than an act of Parliament.

The 24th Victoria having received the royal assent, it still had not the force of law, until Her Majesty in Council had approved of it, and ratified it. An assent had already been given by the Queen as the third great power in the Parliament of Canada, but that assent must be again affirmed by an Order in Council before the Act could become law. If so, there is not a single act in the Statute Book which has the force of law.

The proposition therefore is that of Parliament composed of the three great powers of the State, (the only powers which could make a law,) have assented to the law—still the Privy Council, which has no legislative functions whatever, must approve and ratify it before the Act can become a law.

This argument in my opinion is untenable; the 12th Victoria required an Order in Council precisely because the 6th and 7th

Victoria required it, not for the purpose of giving effect to the Act of 12th Victoria, but solely to suspend the operations of the Imperial Act. As soon as an act was passed in this country to carry out the treaty in Canada, the law had been fulfilled, and the jurisdiction transferred from the Imperial Parliament to the Canadian Parliament.

If not for this object, what was the Canadian legislation to effect?

If then these acts had not required an Order in Council to be given, such order would not have been necessary.

The Act 12th Victoria and the Imperial Act 6th and 7th Victoria, both stated that as soon as Her Majesty, by an Order in Council, suspended the 6th and 7th Victoria, then the Canadian law should come into force. This order was given, and the Imperial Act was consequently suspended.

Thus, then, by the passing of the 24th Victoria, all the powers of the government were brought into harmonious action.

The Legislature, the Judicial and the Executive, all concurred in giving full effect to the treaty.

The powers conferred by this concurrent action upon the Judges and Magistrates of the country, in general terms, were as a mere matter of local jurisdiction finally regulated by the amending Act. For the 12th Victoria, chap. 19, in giving this jurisdiction to the Judges and Magistrates, generally, might have been inconvenient in practice, as the most important questions of international law might have been left to the determination of any country magistrate, who could not be supposed to bring to such important considerations either the requisite time or the knowledge to deal satisfactorily with the subject. I say this in no spirit of blame, but solely to show how and for what purpose the amending Act was passed, and that in so leaving the investigation of these points to more experienced Judges, Parliament in no way exceeded its powers or violated any of the provisions required for effectually carrying out the treaty.

The treaty only received legislative effect in the United States in 1848, several years after it had been passed.

Whether such legislative action was required to give effect to the treaty had been then discussed.

The case of Nash, otherwise called Robbins, delivered up in Charlestown for mutiny and murder, and afterwards executed in Jamaica, had raised doubts, and these doubts were therefore effectually put an end to by the passing by Congress of the Act of 1848.

Those desirous of further examining this question are referred to Hind on *Habeas Corpus*, page 581, and following pages, where the subject has been to a certain extent discussed.

The moment then, that the Order in Council required by the 6th and 7th Victoria, and 12th Victoria, chap. 19 had been passed, and the proclamation made in this country to that effect, the Order in Council had fulfilled the object intended to be attained by it, viz., the suspension of the Imperial Act within the limits of this Province, and was no longer necessary.

It was intended in the first instance merely to declare that as the Imperial Act alone could legislate on the subject for all the dominions of Her Majesty, the Act had been passed; but so soon as the Canadian Parliament had legislated for the purpose of carrying into effect that law, within the jurisdiction of that Parliament, according to its own laws and institutions, that the Imperial Act in that particular would be accordingly suspended. Once suspended it remained suspended, so long as Canadian legislation existed on the subject.

Whether the Canadian Parliament could originate legislation on the subject, is beside the question.

If it had authority in the first instance, it was delegated to it, and delegated by the only authority which had any control over the matter.

If the Imperial authorities were satisfied with the matter, surely it is not for the people of this country to complain.

The Imperial Act, therefore, once suspended, it remained suspended, so long as there remained on the Statute Book any enactment substituted for the Imperial one, carrying into complete effect the Ashburton Treaty.

The conclusions, therefore, which I deduce from this branch of the case after the passing of the 24th Victoria, are—

1st. That the 24th Victoria was an amending Act to the 12th Victoria, chap. 19, and simply substituted one mode of procedure for another.

That such power was expressly given by the fifth section of the 6th and 7th Victoria, chap. 76. That the power given to regulate necessarily implies the right to amend.

That such amendment having received the Royal assent, it became law, and was absolutely binding on all the inhabitants of the country.

That it was more effectually to carry out the provisions of the law, and the treaty, as declared in the Imperial Act.

That it had not the effect of reviving the 6th and 7th Victoria, Imperial Statute.

That the only law in force in the Province on the subject, is the 24th Victoria, consequently that my warrant issued under the provisions of that law, is legal to all intents and purposes.

I need not, therefore, extend the argument any further. I have confined it to the examination of the general proposition, that the Imperial Statute, 6th and 7th Victoria, was in force, and that I was, therefore, without jurisdiction in the matter.

I will not touch on the smaller points raised tending in themselves only to support the general objection. I have confined the argument to a strictly legal view of the objection, without, I trust, being unnecessarily diffuse.

Allusion has been made in the course of the argument, to the fact that different opinions have been entertained on this subject. What may be the opinion of others on this point, it is neither my business nor my duty to enquire. I am not here to criticise the opinions of others, but to state my own. This opinion has been formed, irrespective of the opinions of all others, and I may say I have never entertained a doubt on the subject.

In doing this I have stated the propositions of law, which I consider as necessarily flowing from the argument, and after a careful examination of the matter, I have come to the conclusion that my warrant was properly issued, and the objection taken by the Counsel for the prisoners is, therefore, overruled.

Mr. Kerr desired to bring under his Honor's notice another objection, viz., that the prosecution had not, under the 24th Vic., chap. 6, made out any case against the accused. He said that the 12th Vic., chap. 19 gave to judges and magistrates of this country cognizance of crimes committed "within the jurisdiction of the United States, or of any of such States"; but in the 24th Vic., cap. 6, the words, "or of any of such States," do not appear. It becomes, then, necessary to enquire whether the act committed by the accused at St. Albans, Vermont, constituted a crime committed within the jurisdiction of the United States of America. There was with regard to the U. States, a federal jurisdiction and a state jurisdiction. The former, or U. S. jurisdiction, was based on certain grants of sovereign rights and privileges, made over by the people of the several States composing the former Union. No other rights and privileges attached to the Government of the United States; and all other rights and privileges of sovereignty not expressly made over by the Constitution to the Federal government, attached and remained to each of the several States. In support of this he would refer to "Story on the Constitution," p. 412. The Government of the United States could not, then, claim any power not granted to it by the Constitution, and the powers actually granted must be such as were given expressly or by implication. We had, then, to enquire whether the jurisdiction of the United States extended over crimes committed within the body of one of the several States of the Union. He cited the opinion of Chief Justice Marshall,

delivered in the case of Bevans, to shew that the jurisdiction of the United States extended over only the District of Columbia, territories, dock-yards, etc., and over such places as had been placed specially under the jurisdiction of the U. S. government. Under the Constitution and laws of the U. S., the Federal Government had no power to legislate for States, or in regard to crimes committed within the jurisdiction of the State of Vermont. The conclusion of His Honor's warrant stated that the offence was committed against the peace of the State of Vermont. Could the crime have possibly been committed against the peace of any other State, than that which had jurisdiction over it? The consequences were these: Robbery in a State or place not specially under the jurisdiction of the U. S. Government was a crime for which the Government thereof had alone a right to legislate. Vermont had exercised that right in this instance. Taking this into account, the Court was not called upon to decide as to a point affecting the general Government, but which merely concerned an individual sovereign State. He thought his Honor must come to the conclusion that the robbery, if robbery there was, was committed within the borders of the State of Vermont, and not within the jurisdiction of the U. S., and that consequently the statute (24 Vic.) did not apply in this case, and the prisoners must be discharged.

Mr. Abbott urged the question whether or no there were really two jurisdictions in the United States; one jurisdiction of the Federal Courts, and another of the State Courts? And, in respect to this particular charge, were these jurisdictions independent of each other? Had the Federal Courts of the United States any jurisdiction over this offence, or if not, had the Courts of the State of Vermont? And if the State of Vermont had jurisdiction, was it exclusive, or was it concurrent with that of the United States with regard to the robbery committed at St. Albans? It was contended on the other side that it had been proved that this offence, committed in the State of Vermont, was against the laws of that State. The prosecution had even put a Vermont lawyer into the box to prove this fact. But neither in the warrant nor in the information had the attempt been made to prove that this was a crime against the United States or cognizable by them. The lawyer who had been put into the box had proved that the crime of robbing Brett was one entirely and exclusively within the jurisdiction of the State of Vermont, and not cognizable by the United States Courts. He would refer the Court to Wheaton's American Criminal Law, vol. 1, page 155 and following, and by this authority it would be seen that the United States had not jurisdiction over the crime of robbery committed in Vermont, or in any State having its own Legislature and jurisdiction. There were, then, two juris-

dictions in the United States, and the offence charged here was one within the exclusive jurisdiction of the State of Vermont. The framers of our law appeared to be well aware of this fact, as they had made provisions expressly for those two jurisdictions. The statute 12th Victoria, cap. 19, was evidently drawn up with a careful view of this distinction as to the two jurisdictions, and in this respect harmonized exactly with the provisions of the Constitution of the United States. But the 24th Vict., cap. 6, hastily prepared to facilitate the extradition of fugitive slaves, had disregarded the distinction, and provided only for the extradition of persons who had committed certain crimes within the jurisdiction of the United States, omitting to make similar provisions with respect to "any of such States"; and the omission of any provision with regard to "any of such States" had been carefully made wherever one had occurred in the former statute. This must surely mean something, and only one construction could be put upon it. The word "jurisdiction" in our statute should be taken in its technical sense; Sedgwick, 261 and 263, laid down that when technical words occurred in a statute, they must be taken in a technical sense. The technical meaning of the word "jurisdiction" was perfectly plain, and the Court would observe that in our statutes care had been taken not to use it in its popular sense, but in its strictly legal sense.

Mr. Johnson said it was stated by the counsel opposite that we were invoking a jurisdiction we had no right to invoke, and a great deal had been said as to the domestic jurisdiction of the United States, and of the Courts of the United States, but not one word as to the sovereignty of the United States, and as to the will of those two Powers who contracted, and whose contract we were to give effect to if we could. There was a vast difference between one State and several States, and the meaning of the word "jurisdiction" in the sense of sovereignty in which it was used by nations contracting as the United States and Great Britain had contracted by this treaty. It could not be contended that the two nations had power to legislate one thing, and the local Legislatures within the sovereignty of each, another. The word "jurisdiction" meant sovereignty or nothing when applied to nations; and the parties to the Ashburton treaty could not have meant anything so senseless as that the jurisdiction of the Federal Government, in cases of extradition, was merely a domestic jurisdiction, extending only over the District of Columbia, the wild lands and such places as dockyards and ports. Did Great Britain then say, "We mean never to ask for the extradition of any fugitives whatever except of those found in the aforesaid localities?" Such a construction would be at variance with common sense. The word "jurisdiction" must mean the exercise, the possession of power, and the nations

contracting with regard thereto could not mean by the word the actual domestic jurisdiction exercised by a Court of Quarter Sessions, by the Court of a State, or by the Supreme Court of any State or the United States. The treaty did not mention the words "one of the said States," but merely "the United States." The words were not that the crime should have been committed against the jurisdiction of the United States, but "in the jurisdiction of the United States." What was alleged in the warrant was, not that the offence was committed against the jurisdiction of the United States, but against the peace of the State of Vermont, one of the United States of America, and within the jurisdiction of the said United States. This was all that was necessary. If the prisoners' counsel held the correct view, the treaty would be a nullity. There could be no extradition for any offence committed against the laws of the United States properly so called except in the small District of Columbia. He believed that the treaty and statutes passed to give it effect must be construed in the most liberal and not the most narrow manner, and that the United States Government had power to extradite as regards every State in the Union.

Mr. Devlin followed on the same side.

Mr. Bethune contended that the Court could not put upon the words "within the jurisdiction of the United States" the strict interpretation given them by the Counsel for the defence, and cited authorities to show that in interpreting statutes the real intention would always prevail over the literal intention or expression. The preamble of the Act must be considered as a part, and explanatory thereof; and the 24th Victoria judged by this principle, and receiving its proper broad and liberal interpretation, would sanction the view of the prosecution, that the United States had power as regards every State of the Union in the matter of extradition. Was it to be supposed that while Great Britain treated respecting the extradition of criminals from all parts of her broad empire, the United States was to be understood as agreeing to extradite with reference to only a few small sections such as the district of Columbia? The words of the treaty bearing upon the subject were—"offences committed within the jurisdiction of either nation." The statutes used the same phrase. The only question was—Was Vermont within the jurisdiction of the United States? Every witness swore it was. We were bound to give the broadest meaning to the word "jurisdiction" in this case, and could not say it meant the judicial jurisdiction, but meant "within the territorial jurisdiction of the United States." The learned gentleman cited several authorities, including "Vattel," in support of his views.

Mr. Kerr was astonished to hear the arguments of his learned friends. The State of Vermont had given over to the Federal Government certain rights, but it had not given the right of jurisdiction. He maintained that where the court of a country could not take jurisdiction of an offence, that offence was not committed within the jurisdiction of the country itself. The Government had brought a great deal of influence to bear on this case; but of course every body was aware that a peace-offering must be made to the Federal Executive. A number of people were of opinion that the prisoners, though proved belligerents, should be given up, in order that our fears might be silenced, and the bugbear of future danger averted. Everything had been done to throw difficulties in the way of the defence, still it was to be hoped that this Court would render to the prisoners that justice which was their due. It was to be hoped that his Honor sitting there would do justice to these men regardless of consequences.

Mr. Laflamme argued that there was nothing to justify the rendition of the prisoners on this charge. The United States had a certain jurisdiction belonging to the Federal Government; the State of Vermont had a separate and independent jurisdiction of its own, and this charge was one of those which were cognizable only by the jurisdiction of that State. In fact and in law the claim now put forward by the prosecution was utterly untenable; and the Court, he thought, could come to no other conclusion. Our authorities had gone out of their way to interfere in this case. We had seen members of the Government posting off to Washington to appease the authorities there, just as if there were no law in Canada to meet cases of this description. We have seen members of the Government go to Washington to promise that we would be good boys in future, lest General Dix should come over to Canada and rescue the prisoners from our justice, so that they might be given up to their justice. But no matter how the Government of this country had interfered in this case, he (Mr. Laflamme) was certain that this Court would deal by these young men as the principles of British constitutional law directed.

Judge Smith—I will take the case into consideration, and give my decision on Tuesday.

The Court then adjourned.

TUESDAY, Jan. 10th, 1865.

His Honor Judge Smith gave decision on the point raised by the counsel for the defence on Saturday, as follows:—

This objection rests on the ground that the offence charged is not covered by the Ashburton Treaty, that it is an offence against the State of Vermont; and as the State jurisdiction of Vermont is

separate from, and independent of the jurisdiction of the United States it is not covered by the 24th Victoria, chap. 6, which speaks of offences committed within the jurisdiction of the United States alone.

That the jurisdiction of the United States, and that of several States, are separate and independent of each other, and regulated by positive law. That the 12th Victoria, chap. 19, acknowledged this distinction by speaking of the jurisdiction of the United States, *or of any of such States*, thereby covering all offences committed either within the jurisdiction of the United States, *or of any such States*, and that the 24th Victoria, chap. 6, having omitted these last words, viz.: "or of any such States," that it necessarily and intentionally restricted the operation of the Ashburton Treaty to offences committed solely within the jurisdiction of the United States. That it has been proved in this case by the evidence taken in support of this application, that the offence charged against the prisoners was committed within the jurisdiction of the State of Vermont and against the laws of that State alone, although within the Territory of the United States, that it does not fall within the Statute 24th Victoria, and consequently the prisoner is entitled to his discharge.

I have thus stated the objection in its broadest possible form, that it may be covered by the argument made by the Counsel for the prisoners.

The Ashburton Treaty was passed for purely national purposes. The surrender of persons for imputed crimes can only be done by the Supreme Executive authority of independent nations.

This power in Great Britain existed in the Imperial Parliament, which could alone legislate for the Empire. In the United States it existed in the Supreme Federal Legislature of the nation. The object of the treaty could only be attained by the national power, consequently it did not reside in any of the United States, but in the Federal legislative power of the United States. The word jurisdiction is not used in its limited sense, as in reference to Courts of Justice, or State legislation, but to express the Supreme National jurisdiction of the Empire itself. In this sense, and in the only sense, in which the word jurisdiction can be here used, it means, and is the sovereign jurisdiction of the nation, which alone had jurisdiction to deal with the subject. To suppose that the word jurisdiction can be here used in a limited sense, as either expressing or intending to imply the jurisdiction of any State or of any Court is necessarily to suppose that these inferior jurisdictions would have exercised any power whatever over the subject matter of the treaty, or to suppose that the Supreme Federal authority having legislated, the entire nation had wilfully restricted the objects of the treaty

to a small part only of its own territory, a supposition which cannot be entertained for a moment. By the 6th and 7th Victoria, chap. 76, the treaty received a legislative authority and force within the territory of Great Britain, and by that law a provision is made for the surrender of persons charged with offences committed within the jurisdiction of the United States, and who should be found within the territory of Great Britain.

The word jurisdiction here must, therefore, mean territory, and must mean the territorial jurisdiction of the nations, or it can mean nothing. The same meaning is given by the Act, where power is given to magistrates and judges of both nations, and the whole law itself clearly indicates what Parliament intended, when the word jurisdiction was used. So also in the United States, where this treaty with other treaties of the same nature, received legislative force by Congress. Congress legislated for the several States as well as the United States. Hurd, on *Habeas Corpus*, on page 579, says: "The duty of surrendering the fugitive arising only from Treaty stipulation, its performance is supposed to appertain to the Executive department of our Government, which by and with the advice and consent of the Senate, constituted the treaty making power; and by the discussion which took place in the case of Holmes and Jennison et al., in 14 Peters, it was settled that no Governor of any State had power to deliver up to a foreign Government a person charged with having committed a crime in the territory of that Government." Thus it appears evident that the Government of the United States and the Supreme Court of that Government concurred, that in treaties the words jurisdiction and treaty were convertible terms.

So far, therefore, as the Imperial Act is concerned, there can be no possible difficulty on this point.

But the Canadian Parliament in legislating on the subject under the power conferred on that body by the Act of 6th and 7th Victoria, introduced into the first clause of 12th Victoria, the words which have given rise to the difficulty.

That Statute said throughout the Act, that surrender should be made by reason of offence committed within the jurisdiction of the United States, or of any of the said States, thereby departing from the words of the 6th and 7th Victoria and of the treaty itself. And so throughout the said Act 12th Victoria, the same words are used. These words, so unnecessary to express the objects of the treaty itself and the 6th and 7th Victoria, have given rise to the idea, that it was the intention of the Legislature to make the word jurisdiction, used in the treaty, and in the 6th and 7th Victoria, to be understood to be used in its limited and subordinate sense, and thereby to create the same distinction in this Act, in explaining

treaty obligations which exists when the word is used in its limited and subordinate sense, to express the distinction between Federal and State jurisdictions, or in Courts of Justice.

This was clearly a mistake of the Legislature, and beyond its authority to do. For such distinction, if it could exist at all, would have changed the contract between the two Governments, and would have nullified the treaty itself—a power which the Parliament did not possess.

But it is clear to me, from the whole act, that the additional words were used not in such a sense, but from extreme caution, and a desire more fully to explain that the word jurisdiction used in the treaty, was to extend over the several States in the same sense in which it was used when applied to the United States, although this was altogether unnecessary, and was calculated rather to confuse and to create doubts, than to remove them.

The 24th Victoria, therefore, removed these words so improperly used in the 12th Victoria, chap. 6, thereby restoring the word "jurisdiction" to its true and original meaning, as given to it by the treaty, and by the 6th and 7th Victoria. The third section of the 12th Victoria clearly show how improperly these words were used.

For by that section, power is there given to any Governor of any particular State to apply for the rendition of any person charged with crime, with power on his side to surrender to this country any person so charged, and found within the limits of his particular State.

Such a power does not exist. It is neither to be found in the treaty nor in the Imperial Act, and it is not to be found in any Act of the Congress of the United States.

Thus, Chief Justice Marshall, in answer to a question put in the argument on the point, (see his work on the Federal Constitution, page 142-3): What is the jurisdiction which a State professes? "We answer without hesitation, the jurisdiction of a State is co-extensive with its territory, co-extensive with its legislative power." This is undoubtedly true. The argument, when applied to the United States, is clear. Thus the jurisdiction of the Federal Government which is supreme, is as extensive as its legislative power. This legislative power extends over the whole United States in reference to matters exclusively within its functions, such as the treaty making power. Therefore Congress, being the legislative power, has exclusive jurisdiction over the territory of the United States in this respect, and, therefore jurisdiction and territory are convertible terms, when used in the sense of the treaty power. Now, the separate States, in this respect, have no legislative power whatever, and, consequently, they can have no jurisdic-

tion in the matter, and, if they have no jurisdiction over the subject, it is incontrovertible that in the sense and meaning of the Act there can be no State jurisdiction which can come in contact with the Federal jurisdiction expressed in the Statute, and, consequently, in the treaty, and in the law, the word jurisdiction must mean territorial jurisdiction. Thus it is clear that the words "or of any such State" so used in the 12th Victoria, chap. 19th, were improperly introduced, and they were properly rejected by the 24th Victoria, chap. 6, and the law now stands as if they had never been introduced at all.

The offence charged against the prisoner is an offence committed within the jurisdiction of the United States, and falls clearly within the provisions of the treaty and the Act.

The warrant charging the prisoner with having committed a crime against the laws of the State of Vermont, within the jurisdiction of the United States, is properly stated, and is necessarily within my jurisdiction. The jurisdiction over the offence, that is the crime, is the State jurisdiction of Vermont, but the jurisdiction over the subject of the treaty is in the Federal legislature of the U. S. The offence must be designated as against the State of Vermont, and so it is in the warrant. The objection is, therefore, overruled.

Mr. Devlin said that the prosecution had finished their case, but that if the defence adduced evidence he would be prepared to oppose it.

The voluntary examination of the prisoners was then proceeded with.

Lt. B. H. Young's statement:—I am a citizen of the Confederate States of America, and a soldier in their service; I hold and herewith produce my commission as first lieutenant in the army of the Confederate States, and the instructions received at the time that commission was conferred upon me, reserving the right to put in evidence the further instructions I have received, at such time and in such manner as my counsel may advise. (Mr. Young here put in his commission and instructions from the War Department at Richmond, a copy of which we have already published among the proceedings before Mr. Justice Coursol.) My heart is as opposed as most others to measures of retaliation, but I have suffered so many hardships and endured so many privations in the cause of liberty and freedom, that my heart is steeled against sympathy for the invaders and oppressors of my beloved, my native land. Fresh from scenes of devastated firesides and ruined villages, and listening so lately to the wail of the widow and cry of the orphan; when I behold the ruin and devastation which marks the track of the Federal troops, can any one wonder that the fires of revenge and

retaliation should slumber within my bosom and only need the opportunity to burst into flames. There are but few households in the South that have suffered no privations, and endured no bereavements in our great struggle for the inherent rights of our race. Truly in this war civilization has been made to shudder, and demons to rejoice, in the backward march of all that is ennobling and worthy of the creatures made in God's own image and after his own likeness. Whatever was done at St. Albans, was so done by the authority and order of my Government. I have not violated the neutrality laws of either Canada or Great Britain, nor was the expedition to St. Albans set on foot or projected in Canada. I have left home, friends, luxury and ease to battle for a cause endeared to me only as the cause of right. Disfranchised and driven from my native State, Kentucky, I have espoused the cause of a people whose blood fills my veins, and whose feeling and interest are identical with my own. Having espoused this cause, I will never look back, but rather than yield, will pour out my blood as a sacrifice at the altar of the dearest and noblest cause that can call forth the efforts of man. I have faced death many times ere this; and should I, contrary to all precedent, be extradited, I am perfectly well aware what my fate shall be. I can die as a son of the South, and the agony of ten thousand deaths will never cause me to regret what I have done, and the part I have borne in this struggle of right against might. I had believed that Canada would be true to her pristine reputation; and at least deal me the justice and right guaranteed by the neutrality proclamation of Her Majesty Queen Victoria; and it was with feelings of surprise and wonder that I behold the part her Government has taken against me. All that I ask is that impartial justice shall be meted me and my comrades; with the judiciary I am safe, as I can't but feel that his Honor before whom I now am brought will give me right, though the Heavens fall, and that his sense of justice is far above Government influence and the clamor of the fearful. The flag of the empire has been an emblem of protection to the oppressed and out-cast alien for many a long weary year: and it will not fail to give me that impartiality, which has made it the joy of the fugitive for ages past. I have but done my duty as a Confederate soldier, and am willing to abide the fate consequent thereupon. All the men with me at St. Albans were either Confederate officers or soldiers, and upon many a hard fought battle-field they have proven their devotion to Southern rights and the Southern cause. And should we now be called upon to yield our lives in its defence, the parting words of Hon. Jas. A. Seddon, Secretary of War for the Confederate States, will be verified. They were these: "Lieutenant, you go upon a dangerous mission, and you and your command shall be fully pro-

tected." And I assure the good people of St. Albans that the day upon which I die will be one that will bring a wail to the best families in the Green Mountain State. My death shall be avenged, and that in the blood of Vermont officers. And again I assert that I have a heart for every fate; and if the English law fails to protect me, my government can and will avenge my sacrifice at the shrine of a cause to which thousands nobler than I have yielded their life's blood. I am not, however, fully prepared for the full defence of myself and of my command, without communication with my Government at Richmond, which I am now well assured I can effect within thirty days from this time.

Marcus Spurr's statement:—I am a native of Kentucky, and an enlisted soldier of the C.S. army, and my term of service has not yet expired. I owe no allegiance to the so-called United States, but to the Confederate States of America; I was held as a prisoner of war in a Federal prison from which I escaped; afterwards I was engaged with other soldiers of the afore-mentioned army in doing duty within the Federal lines, last summer at Chicago, Ill. I placed myself under the command of Lieut. Young for the purpose of assisting in carrying out instructions from the Confederate Secretary of War; I was in the States when the raid upon St. Albans was concocted; what I may have done at St. Albans I did as a soldier of the Confederate army, discharging what I conscientiously believe the duty I owed to my God and my country, and my fallen comrades, and in obedience to the orders of Lieut. Young of the said army; in doing this I violated no law of Canada or Great Britain.

W. H. Hutchinson's statement:—I am a native of the State of Georgia, and owe no allegiance to what was at one time the United States; I am not guilty of any of the charges brought against me here. In April, 1861, I joined the Southern army, and have been connected with it up to the present time; I have violated no laws of Canada or Great Britain. For the first four years of this present unhappy war, the Southern people were only doing their duty in repelling an insolent foe, and protecting themselves against outrage, injury and insult; they fought against heavy odds as the muscular resources of the combined world were arrayed against them, and they have overcome great difficulties with the cheerfulness and spirit of a brave people. Our friends, neighbors and relatives have been plundered, and in many instances murdered; and it is the bounden duty of every Southern man to protect and avenge them in an individual or national capacity. No civilized people could do more, and no true patriot, of whatever clime, could do less.

S. T. Teavis' statement:—I am a native of Kentucky, a soldier in the Confederate States army. I owe my allegiance to the Con-

federate Government, and not to the Yankee Government; What I did at St. Albans was in the capacity of a Confederate soldier, in obedience to the orders of Lieut. Young, a Confederate officer. I violated no laws of Great Britain or Canada.

Charles Moore Swager's statement:—I am a native of Kentucky and a Confederate soldier, owing no allegiance to any government but the Confederate States of America; I was captured a prisoner of war by the Yankee forces last May, and effected my escape from my enemies at Chicago, while on my way to prison. I joined Lieutenant Young's command at Chicago, last August, and participated in the St. Albans raid. I feel it my duty as a soldier, to harass and annoy the army and navy of the United States, cripple and destroy its shipping and commerce, capture and burn its towns and cities, and otherwise damage, if possible, a Government which seeks our destruction; my object being to remove, in a manner, the seat of war to the heart of the New England States, and make their people feel some of the horrors of war, in retaliation for the crimes and outrages inflicted on the weak and defenceless women and children of the South; any acts I might have committed at St. Albans was in the capacity of a Confederate soldier, acting under orders of Lieut. Young, a commissioned officer of the Confederate army. I look to my Government for the reward which a soldier who has performed a hazardous and dangerous duty has a right to expect, knowing full well that the people of my beloved South will justify and applaud my conduct. I have violated no laws of Great Britain or Canada.

Mr. Abbott then presented the following petition, asking for thirty days delay.

PROVINCE OF CANADA, *District of Montreal*, Lower Canada, to wit: } Bennet H. Young and Marcus Spurr, two of the prisoners whose extradition is demanded, deposing on behalf of themselves and of their fellow prisoners in this matter being severally duly sworn, do depose and say: That deponents and the other prisoners charged with the offence now under investigation, require certain testimony which is necessary and material to their defence, and which they are unable to procure in Montreal, or even in Canada. That such evidence will establish amongst other things that every one of the prisoners now in custody is an officer or soldier of the army of the Confederate States of America, duly enlisted, enrolled or commissioned respectively, and that their term of service has not expired; That this deponent, Bennett H. Young is, and was on the nineteenth day of October last, an officer

of the army of the Confederate States of America, holding the commision and rank of first lieutenant in that army; and that the other of these deponents and the remainder of the prisoners were duly engaged and placed under his command for special service under the authority to him given by the Government of the said Confederate States, through the Secretary for the War Department thereof; That every act and thing which they or any of them did on the nineteenth of October last at St. Albans, in the State of Vermont, was so done under and in pursuance of the orders of the said Lieutenant Young, given by him by virtue of his instructions from the said Government and of his authority in the premises; That all and every of the said acts were duly authorised and directed by the military authorities of the said Confederate States acting under the Government thereof, and were acts of warfare committed and performed in conformity with the rules and precedents by which civilized warfare is conducted; and that they were more than justified by the acts of generals and armies in the service and under the orders of the Federal Government of the United States, and as retaliation for such acts; That the said acts of these deponents and of the other prisoners have been approved of by the said Government of the said Confederate States, as being done in conformity with instructions so received from the said Government, and have been recognized and adopted by the said Government in authentic form according to constitutional law and usage; That on a former occasion when before a Judge on an application for extradition, these deponents and the other prisoners used every means in their power to open a communication with Richmond for the purpose of procuring such evidence, and amongst steps tending to that end, applied by petition to his Excellency the Governor-General of Canada, praying for such assistance as might lawfully be afforded them in the attempt to obtain evidence therefrom; and also made a similar application to the President of the United States, which applications were rejected; that they also caused special messengers to be sent to Richmond, some of whom had been arrested by the Federal authorities previous to the discharge of the deponents and others who had not then been heard from. But that so soon as they were discharged by Judge Coursol, their efforts to communicate with Richmond ceased, and the news of such discharge doubtless caused the authorities there to desist from any attempt to transmit to deponents the documents applied for.

That immediately after the re-arrest of deponents a messenger left Halifax charged with procuring from the Government of the Confederate States the required evidence, and that although deponents expected and believed that the opinion of Judge Coursol would be sustained, they also took other means to place themselves in a

condition to be able to defend themselves, the nature of which they cannot disclose without imperilling their success.

That deponents have since received information and assurances upon which they believe they can rely, that the evidence they require and have already taken measures to obtain, can and will be forthcoming within a month from this date. That if they are not accorded the said delay to enable them to procure the evidence necessary for their defence, such evidence as they will be enabled to offer will be necessarily less perfect than if a just and humane indulgence were accorded to them; and that if by reason of the want of requisite time to obtain such evidence, their defence should be imperfectly established, and they should thereupon be delivered to the emissaries of the Federal Government, such a proceeding will be handing them over to certain death at the hands of the executioner, on the pretence that they committed crimes which they never either committed or contemplated, and which they look upon with abhorrence; but, in reality, because they are the enemies of the Northern Government, engaged in warfare against them, and because that Government desires to wreak vengeance upon them, which is neither justifiable by the laws of war nor of any civilized country.

And deponents further say that they do not apply for the said delay from any desire unduly to suspend or delay the proceedings for their extradition, but for the sole and only reason that they earnestly desire to place the whole truth fully and fairly before his Honor the Judge, before whom the application for their extradition is pending, and that they cannot propose with confidence to do so within a less period of time than that which they have mentioned.

And deponents have severally signed.

Sworn before me at Montreal, this tenth day of January, eighteen hundred and sixty-five.

BENNETT H. YOUNG,
MARCUS SPURR.

J. SMITH.

Mr. Devlin—Objected to the application, contending that it was premature; that the first question to be solved and determined was, shall witnesses be examined in behalf of the prisoners? If the Court should rule in the affirmative, that would be the time for such an application as the present. This application was a trap, for an assent to the examination of witnesses for the defence would be involved in the granting a delay for the bringing up of such witnesses. We ask the counsel opposite to go on their defence, and whether they intend to examine witnesses.

Mr. Abbott.—Of course we intend to examine witnesses.

Mr. Devlin.—The first question I would wish to bring up is a question of law, and in order to do so, I call on my learned friends to proceed with the examination of their witnesses, if they have any, or to cite some authority, or present some argument to justify the Court in receiving evidence for the defence.

Judge Smith.—It is clear what the nature of the objection is; but I cannot give any opinion upon it till I hear counsel on both sides.

Mr. Devlin said the indulgence asked would amount to a denial of justice, the accused having already been granted thirty days for the obtainment of witnesses from Richmond. If the prisoners had availed themselves of this indulgence, their witnesses might have been here to-day. They were arrested on the 19th October last, since when, with the exception of a short time, they had been in custody, having had sufficient opportunity to bring forward their testimony in defence. The object of the application was, evidently to defeat, by delay, the prosecution. Then the affidavit abstained from mentioning a single fact which can be or could be proved by any of the witnesses whom they pretended they were anxious to examine, in spite of the rule requiring that when an application was made for delay to obtain testimony, the applicant must state the facts he desired to prove thereby. Was his Honor prepared to depart so far from a practice hitherto prevalent, and sanction an application of a party who had the assurance to demand this favor, and, at the same time, studiously conceal from the Court the facts intended to be established? The affidavit or application itself was defective, and seems to have been written with but one object, and that to abuse and insult, as far as they could, the United States, the parties who were simply asking justice at our hands. As to the statements that the accused, if extradited, would be sacrificed by the United-States authorities, we were bound to believe that, if surrendered to them to-morrow, the raiders would receive impartial justice and a fair trial. He (Mr. D.) protested against the introduction into the affidavit of statements as to the execution of vengeance upon the raiders in the event of their rendition to the authorities. Such statements were an infringement upon the honor of the Court. If the prisoners were commissioned by the authorities at Richmond, the latter should have taken the precaution to furnish them with the evidence of it, and of the belligerency of their acts. Taking it for granted they were sent abroad to commit murder and robbery in St. Albans, in a peaceful, defenceless place, they should have been fortified with all the authority that the so called Confederate States could confer upon them, in order that their lives might not be exposed to the consequences of

the crimes they had committed. If such were acts of war, and were to be justified on that ground we had a right to say—we are neutrals determined to do even-handed justice, show us your authority to commit such deeds against your adversary. The learned gentleman concluded by ridiculing the application as one that should not for a moment be entertained by the Court. The delay asked for, he added, would simply amount to a denial of justice, and to a total extinction of the case.

Mr. Johnson said that this affidavit prayed for a delay. Now two questions arose: first, for what purpose was the evidence intended? second, what were the grounds for not submitting the evidence that could be procured here? In another Court he had opposed an application of this kind, and he would do so here. He contended then, and contended now, that in a preliminary investigation like this one, such an application could not be sought for, as it was entirely outside the scope of the treaty, under the terms of which a magistrate must commit where there are just grounds for suspicion. This was all that our magistrates had to do. Either these men must be tried by the Courts of the United States, or not be tried at all; and to say that the treaty contemplated that offenders, for whose extradition the United States made application, were to have their guilt or innocence tried and pronounced upon in our Courts, was to say that we had degenerated from a state of civilization into a nation of savages, unable to make treaties or to enforce them. The affidavit did not state what was the nature of the evidence to procure which a delay or thirty days was prayed for. It did not state explicitly what the law demanded it should, namely that the evidence be specified, in order that the Court might determine whether that evidence was of the proper kind. If a British subject made the same application, and made the same omission, his prayer would not receive a moment's consideration. No man had a right, according to the English law, to produce evidence before a magistrate tending to characterize an act that he admitted to have done. He would refer to a case recently tried in England—that of the Gerity. That case was tried before Chief Justice Cockburn, and Justices Crompton, Blackburn and Shee; and it was held that on an application for extradition the duty of the examining magistrate was purely to enquire after the evidence of a *prima facie* case, and nothing more. And it was further held that the fact of belligerency must be a case for trial before a Jury, in the country against which the offence was committed, and not for the Magistrate of a foreign nation before whom the complaint was made. The learned counsel proceeded to read from an English law magazine, the remarks made by the four Judges in the Gerity case, and to comment on the decision of their Lordships; and pro-

ceeded to say that the decision in the Gerity case laid down that the question of belligerency was one that could not come before an examining Magistrate.

Mr. Bethune.—This was simply a charge of robbery. The parties dressed as citizens, entered a town where there was not an armed soldier, and, in broad daylight, committed what was known as common robbery. The parties admitted that they were there, and asserted that what they did was an act of war. But the Court had no right to investigate whether it was or was not an act of war; to do so would be to go beyond the scope and meaning of the treaty. The treaty simply contemplated a preliminary examination, and on a *prima facie* case being made out, then it was for the Judge to commit, and the matter was left between the two Governments. The case of the Gerity had been mentioned by his learned friend, Mr. Johnson. A case in which a similar opinion was held would be found to have been given by Attorney-General Cushing, in pages 204 and 211 of the "Opinions of the Attorney's-General." A more recent case was that of Frank Muller. From the law report of the proceedings against Muller in New York, the commissioners said that in order to determine whether the man was guilty or not, he must be sent back to be tried in the place where the murder was committed. Then there was the case of the British brig "Richmond," in which, in a case of murder, the same commissioner in New York pursued a similar line of conduct. We had a case in our own Courts, where the same principle was maintained; it was that of the runaway black Anderson. He was tried in Upper Canada, and, as would be found in page 60, tenth volume Common Plea Reports, Chief Justice Draper said: "If there be a question of fact to be tried, I apprehend he (Anderson) must be surrendered, as that can only be tried in the country where it arose." The learned counsel concluded by expressing a hope that the Court would not act contrary to the principles laid down by the English judges in the case of "Gerity."

The Court then adjourned.

Wednesday, Jan. 11, 1865.

The Court opened at half-past ten.

Mr. Devlin asked if the prosecution were to understand that his Honor, in deciding upon the application for thirty days' delay, would decide upon the admissibility of evidence.

Judge Smith.—After Mr. Abbott has finished his argument, I will be in a better position to pronounce upon that point.

Mr. Abbott.—I am prepared, your Honor, to argue the question upon the instant.

Judge Smith.—The whole question, as to the admissibility of the evidence, Mr. Devlin, is intimately connected with the merits of the case, and I feel it would be premature in me, at this stage of the proceedings, to pronounce an opinion, and do not think it would be in the interest of justice that I should do so. I stated yesterday that no defence, properly so called, could be entered into at all, and that the prisoners could not go upon their trial before me, for I have no jurisdiction in that respect. What I am bound to do is to see if the prisoners have committed any crime which falls within the scope of the Extradition Treaty, and that must depend upon the *res gestæ* of the alleged offence. Suppose that a man is charged with murder, and that a witness comes up and says, "I saw you strike a man down and kill him on the street." But suppose the man accused turns round and says, "I must be permitted to tell the whole story, and shew that the party whom I struck down was following me from behind with a hatchet to kill me, and that I shot him in my own defence. Now, supposing such a case, would the offence be murder? Not at all. Apply, then, the same reasoning to this case; the prisoners say that they were in St. Albans; that they committed certain acts there, but that they were justified in so doing, as they acted under the instructions of their government, a thing which they were bound by their allegiance to do. Now, these men say—"we did these acts, but give us an opportunity of showing that we had ample authority and justification for these acts." Technically speaking, these men cannot go on their defence before me. But if they show commissions and prove that they are belligerents, then, possibly, there must be an end of the matter.

Mr. Abbott.—The distinction which I am prepared to establish is this:—If it be really a case of conflicting evidence, the fact of the crime being committed being proved, that is no case for a Magistrate to try; it is not within his jurisdiction to do so.

Judge Smith.—Clearly not; it is none of my business.

Mr. Abbott.—But if, on the other hand, the prisoners propose to shew that the act committed does not constitute a crime for which extradition could be demanded, that is a question which the Judge must investigate and decide. In doing this he does not try the robbery, but the application of the treaty. The prosecution should be content to limit themselves to the question of delay before the Court; the magnitude of the questions involved, if your Honor is called upon to decide now as to whether the evidence is material or not, should induce the prosecution to confine themselves to the matter now before your Honor.

Judge Smith.—The question of the admissibility of the evidence is a very different thing from the relevancy of the evidence. No

verbal testimony can be received in the way of proof. If the prisoner Young had produced documents at the time he was asked what he had to say—if he had had them in his possession, I don't see how the prosecution could oppose their being put in. Something has been said about delay in this case; but since I have been connected with it I am not aware that there has been very great delay. I think the case has been proceeded with as rapidly as possible. I granted my warrant on the 13th of December; the prisoners were arrested on the 20th; they were brought before me on the 23rd, just as I was finishing the Court, and I could not then proceed. The holidays intervened, and the prisoners came up on the 27th. Now it is the 11th of January, and seven days have been occupied *en délibéré*. In fact the case has gone on with great celerity, when the amount of labor connected with it is taken into consideration. As to the present application, my impression is that I should grant delay. I do not wish to be obliged to give my reasons for this opinion at the present time, and it is within my discretion to hold back any opinion at this moment on the facts. But is there any argument to be offered by the prosecution?

Mr. Bethune.—I don't withdraw the opposition I made yesterday in the slightest degree. I am satisfied, looking back at the whole history of this matter, that all this is merely for delay. There is an application for a delay of thirty days, in order to send to Richmond, and for what? For the very instructions the prisoners said they received. Your Honor has ruled that there can be no verbal proof, therefore the prisoners should produce the specific orders they received from Richmond. Why are they not produced?

Mr. Abbott.—Does my learned friend imagine that a lieutenant would carry instructions from the Secretary at War on his person?

Mr. Devlin.—We have no power to control the action of the Court in this matter of granting delay, but I protest against it.

Judge Smith.—I have not given any judgment as yet, Mr. Devlin.

Mr. Devlin said he solemnly protested against this delay; and, if it were granted, he doubted very much whether he would ever be instructed to appear in this case again. It was the second time in the history of our Courts that when prisoners had voluntarily entered upon their defence an application of this kind had been made. If five of our own citizens were before the Court, charged with the commission of crime in this Province, after the evidence for the prosecution had been gone into would a delay of thirty days be granted? It was the duty of the counsel for the prisoners, when their clients were brought up on the 23d of December last, to have informed the Court that they were not in a position to bring forward their evidence, that their witnesses were absent, and then to request

the Court not to call upon them to enter on their defence till they were fully prepared. This application for thirty days' delay was made without there being a tittle of evidence to show that diligence had been used to obtain evidence for the defence. There was no precedent to justify a delay of this description. The American authorities did not show a single case in which, on their side the lines, such an application had ever been granted in behalf of a fugitive claimed by us under the treaty. He doubted if an application of this kind was ever even made in our or the American Courts. If this delay was granted, he really thought that the Extradition Treaty would, as far as Canada was concerned, be considered a dead letter.

Judge Smith thought that Mr. Devlin in his remarks, regarding the Court, had gone a little too far; he (the Judge) had simply questioned the counsel to know from them if it was necessary to hear an argument of the case. He had stated his reasons why he did not wish to decide this point peremptorily. He had given no reasons for his inclination to grant this delay, or for declaring his wish in the matter; yet Mr. Devlin had attacked him as having decided the case unadvisedly, and, without hearing the Court's reasons, had almost charged it with a denial of justice. Now, taking the latter consideration alone, what denial of justice could result by giving the prisoners a delay of thirty days? If they could not produce any evidence of the kind they wished, where was the injury to the prosecution?—those unfortunate prisoners would have to be surrendered. But if they should produce evidence to change the opinion as to their liability to extradition, surely no one could complain, if the testimony be according to the rules of law and justice. Where was the injury? None possible. The Court did not mean to say that what the defence desired to produce might be beneficial; but the delay would simply give the prisoners the means of saying all they could say in justification of the act which their opponents designated an act of robbery, but which they themselves contended was an act of war. If they were robbers they could not escape from the position of such, even granting the delay. In order, therefore, to enable him (the Judge) to judge accurately and correctly as to the position and quality of the accused, and consequently as to the nature of the offence charged, it was but fair to those men to hear what they had to say. Whether his opinion would be borne out ultimately, when he came to assign his reasons, was another matter.

Mr. Bethune.—But we can't withdraw the point we raised yesterday, as our view of this matter.

The Judge.—No; but it may be reserved, and heard on the merits of the case. The great argument of the prosecution was, "why did not these men produce the papers required as evidence in their

defence before ?" Now, we knew the position in which their country was placed, and the difficulty attending a journey to Richmond. How was it it possible to get within even a reasonable distance of that city at present ? The prisoners were placed under great disadvantages in this respect, and it was the duty of the Court to afford them the means of, at least, making known the nature of their defence. Considering the difficulty and danger encountered in reaching Richmond, the delay asked was not extravagant, and not of a nature to defeat the ends of justice, according to the Court's opinion. It is clear to my mind that anything like verbal testimony in this matter will be insufficient.

Mr Abbott.—We will endeavour to give you the best evidence, and in any case we shall proceed according to the rules of evidence. And if we offer evidence admissible under those rules, we expect it will be received.

The Judge.—Oh, clearly.

Mr. Abbott.—I shall not argue the question on its merits, as the Court is disposed to grant the delay. But notwithstanding the statements of the learned counsel, I maintain that this application is by no means unprecedented. On an application recently made in Toronto (Burley's case) the Court granted thirty days' delay for the same purpose ; and Judge Short, of Sherbrooke, also lately granted what he considered a suitable delay for a similar object. Judge Coursol had also given thirty days' delay in this case for the same end. They had administered justice in the United States, on occasions like the present, when their passions were not excited as now, in a similar manner ; and there could be no doubt, many instances could be cited in which the United States Courts had granted delays to parties desirous of showing that no offence had been committed under the Treaty. In the very case cited by the opposite counsel yesterday, in which the plea of insanity had been urged, the Attorney-General's decision showed that the plea had been thoroughly investigated. Then, again, in the case of the deserters from Halifax, whose extradition from Boston was demanded—not on the ground of their being deserters, but of having committed a robbery—what was the answer ?

Mr Bethune.—The case there turned entirely upon the word "robbery." The men had stolen the military chest, aud the Court held it was a larceny and not a robbery.

Mr Abbott.—I get my information not from any special law report —for I have been unable to discover any—but from the ordinary newspapers, and I understand that the extradition was refused because the deserters' crime was complicated with their desertion—an offence of a character not contemplated by the Treaty. We all know that when McKenzie murdered or caused to be murdered

Colonel Moodie, and fled to New York, the Governor of the State refused to issue his warrant of arrest, that the demand for his extradition might be tried. The Attorney-General of the State then gave his opinion that there could be no extradition in such a case at all. Though the treaty had not then been passed, the State Judges were disposed to extradite as a matter of comity.

Mr Devlin.—But never did.

Mr Abbott.—Many Judges, and Chancellor Kent, held they were bound so to do. The only ground on which McKenzie's extradition was refused was, that we had a rebellion in the Province. The then Attorney-General of the State of New York set forth, in an elaborate opinion on the case, that there was no instance in the history of International law of an extradition being granted where the fugitive's offence was complicated with any crime of a political nature. We know also, in the case of McLeod, who went to cut out the "Caroline," when on the American side of the river Niagara, that though he had no written instructions to justify the act, yet in consequence of that act having been adopted by the Government of this country, the Federal authorities, through their Secretary of State, acknowledged it was a sufficient answer to the charge of murder preferred against him, and that he should never have been tried by the State Court.

Mr Devlin.—I admit that. But the circumstances were different from those of this case.

Mr Abbott.—Oh, the circumstances were different, as we shall show by evidence we intend to put on record. There was no national war at the time of McLeod's act, and besides, he held no commission in the British service; and there was no acknowledgment by the United States of any belligerent powers in Canada. There are a dozen points in which the case of Lieut. Young is infinitely more favorable than that of McLeod. I merely mention these facts to show that the assertion that a delay of the kind asked be unprecedented, is entirely fallacious. I could produce many more instances if necessary.

Mr Devlin said the steamer "Caroline" had been engaged in carrying munitions of war to the Canadian rebels, and that the party who attacked her was specially instructed by Sir Allan McNab.

Mr Abbott.—I only referred to those cases to establish the general principle.

The Judge.—I am disposed, under the circumstances, to grant the delay asked for; and believe it is best in every point of view to afford every possible opportunity to both parties to bring forward what may benefit either.

His Honor, Counsel on both sides having consented, remanded the prisoners for thirty days, till 10th February next.

Friday, 10th Feb., 1865.

On the demand of the President of the United States, for the extradition of Bennet H. Young, *et al.*:

Hon. Mr. Abbott said that in consequence of circumstances which had occurred since the application for the 30 days' delay had been made, he should be obliged to make another application for an extension of that delay, the reasons for which were set forth in the following affidavit:

Bennett H. Young and *Marcus Spurr*, two of the prisoners whose extradition is sought in this matter, being severally duly sworn, depose and say:—That immediately upon the granting of the delay of thirty days awarded to them by the Honorable Mr. Justice Smith, for the purpose of obtaining from Richmond, in the State of Virginia, one of the Confederate States of America, seceding from the Union of States, heretofore known as the United States of America, certain documentary evidence material to their defence; these deponents and the other prisoners in custody on the said demand caused messengers to be dispatched by different routes to Richmond aforesaid, with directions to penetrate through the lines of the said United States, the parties prosecuting in this cause; and to obtain from Richmond aforesaid, the documents and evidence already described in the affidavit already fyled in this cause on behalf of the said prisoners, on the 10th day of January last past. That the first of the said messengers, namely Lieutenant S. B. Davis—an officer in the army of the Confederate States of America, who volunteered to proceed to Richmond aforesaid, with despatches specifying the documents required, and requesting their transmission—was so dispatched on the tenth day of January last past, and was arrested by persons in the employ of the said prosecuting parties, the said United States, and was by them detained, on the pretence that he was a spy of the said Confederate States; and was subjected to a trial, before a tribunal termed a general court-martial, convened under the orders and direction of the said prosecuting parties at Cincinnati, in the State of Ohio, and composed of their officers, upon the charge that he the said Lieutenant S. B. Davis whom the said prosecuting parties arraigned before the said court-martial under that name, and also under the name or *alias* of Willoughby Cummings, was a spy within the meaning of the laws of war, and that thereupon the said Lieutenant Davis, was by the said tribunal found guilty, and sentenced to be hung by the neck until he should be dead—which finding and sentence were confirmed by Major General Hooker, an officer of the army of the United States com-

manding the Department wherein the said court-martial was held, and were by him ordered to be carried into effect on the seventeenth day of February instant. The whole notwithstanding (as these deponents are informed and believe) that the said court-martial and the said Major General Hooker well knew that the said Lieutenant Davis was not a spy, but a brave and disinterested man, who had voluntarily exposed himself to the risk of any contingency that might happen to him, that he might aid in placing full evidence before the presiding judge, respecting the matter under examination in this cause; and that he was not charged with and did not carry any other despatches or information than such as was exclusively connected with the proceedings in this matter. And moreover that these facts were all stated by Lieutenant Davis to the said court-martial upon his trial. That these deponents have been credibly informed and believe that the following is an exact copy of the general order of the said Major General Hooker containing the record of the said trial and sentence and his approval thereof:

HEADQUARTERS, NORTHERN DEP'T,
Cincinnati, Jan. 26.

GENERAL ORDER NO. 4.

Before a general court-martial which convened at Cincinnati, Ohio, Jan. 17th, 1865, pursuant to special orders Nos. 212, 250, and 273, series of 1864, from these headquarters, and of which Lieut.-Col. E. L. Webber, 88th regiment Ohio Vol. Infantry, is President, was arraigned and tried S. B. Davis *alias* Willoughby Cummings; charge, being a spy; specification is that said S. B. Davis *alias* Willoughby Cummings, a rebel enemy of the United States, and being an officer of the so-called Confederate States of America, did, on or about the first day of January, 1865, secretly and in disguise enter and come within the lines of the regularly organized military forces of the United States, and within the States of Ohio and Michigan, and did then and there secretly and covertly lurk in the dress of a citizen as a spy, and on or about the 12th day of January, 1865, did attempt to leave the said States of Ohio and Michigan, with the purpose and object of going to Richmond, Va., there to deliver despatches and information from certain parties, whose names are unknown, hostile to the Government of the United States, to Jefferson Davis, President of the so-called Confederate States of America, but was arrested as a spy, on or about the 14th day of January, 1865, at or near Newark, within the said State of Ohio. To which the accused pleaded as follows:

To the specification guilty, except to the word "lurk," and the phrase "as a spy," to the charge not guilty. Finding and sentence: The Court, after mature deliberation on the evidence ad-

duced, find the accused as follows: Of the specifications guilty, the members of the Court concurring therein, and the Court do therefore sentence him S. B. Davis *alias* Willoughby Cummings, to be hung by the neck until he is dead, at such time and place as the commanding general may direct, two-thirds of the members of the court concurring therein.

The proceedings, finding and sentence in the foregoing case of S. B. Davis *alias* Willoughby Cummings, are approved and confirmed. He will be sent under proper guard by the commander of the post at Cincinnati, Ohio, and delivered into the custody of Col. C. W. Hill, commanding at Johnson's Island, who will see that the sentence in this case is duly executed at that place, between the hours of ten o'clock a.m. and three o'clock p.m., on Friday the 17th day of February, A.D. 1865, and make the report thereof to the commanding-general. By command of

MAJOR-GENERAL HOOKER.

C. H. POTTER, Asst.-Adjt-General.

That the parties referred to in the said General Order as "certain parties whose names are unknown, hostile to the Government of the United States," are these deponents, and the said prisoners; and that the despatches and information therein also mentioned had sole reference to the present enquiry. That the said Lieutenant Davis is still detained in custody by the said prosecuting parties, and the cruel sentence passed upon him is yet uncommuted, so far as deponents know or have been informed. That on the 14th day of said January the said prisoners despatched their second messenger to Richmond aforesaid, and for the purposes already mentioned, from whom they have as yet heard no tidings whatsoever. That on the 17th day of said January the prisoners despatched their third messenger to Richmond aforesaid, and that they have received information that he left Washington for his first attempt to penetrate through the lines of the prosecuting parties on the 21st day of said January; but that they have not heard of or from him since that period. That on the 24th day of said January, the same being the day after they were informed of the capture of Lieutenant Davis, the said prisoners sent off their fourth messenger to Richmond aforesaid, of or from whom they have since heard nothing. That in addition to the said four messengers, the said prisoners sent despatches requesting the transmission of the evidence referred to in their said affidavit, to the Government of the said Confederate States at Richmond aforesaid, by a person leaving Montreal early in said month of January, with the intent to proceed to Richmond on his own affairs, but that the said person was captured in Wilmington, in the State of North Carolina, by

the armies of the said prosecuting parties, and was by them released upon parole in the United States, they being ignorant that he bore such despatches; and that he has since made his way back to Montreal without having been able to deliver such despatches. That deponents and the said prisoners, determined also to try the effect of a direct appeal to the President of the said United States for a pass or permission to a messenger to proceed to Richmond aforesaid, for the purposes aforesaid, and to that end despatched J. G. K. Houghton, of Montreal aforesaid, Esquire, Advocate, to Washington, and that the said Mr. Houghton did proceed to Washington and personally saw the President of the United States, and solicited permission to pass on to Richmond aforesaid, for the purpose aforesaid, but was refused, and was by the United States Government ordered to leave the United States, without attempting to penetrate through to Richmond aforesaid, which he was consequently obliged to do. That as appears by the foregoing details, these deponents and the said prisoners have done and used all due, and in fact extraordinary diligence, to obtain the passage of a messenger to Richmond aforesaid, for the purposes mentioned in their said affidavit, and in furtherance of the intent with which they solicited from His Honor the Judge a delay of thirty days, which delay he so humanely and justly granted them; but that the prosecuting parties, by means of their officials and armies, have prevented the delay so granted from being made available in any respect to the prisoners, although deponents and the prisoners are daily expecting to hear news of some one or other of the messengers who have hitherto (so far as deponents are aware) escaped from the agents of the prosecuting parties. That deponents, on behalf of themselves and their fellow prisoners, respectfully represent that as the insufficiency of the delay granted to them has entirely resulted from the acts of the prosecuting parties and their agents, officers, and soldiers acting under their orders, they being in fact about to put to death an honorable and gallant officer upon a false and degrading charge, for becoming an instrument by means of which the intent and purpose of the order of His Honor the Judge was to be carried out; the delay so granted should be extended to a further period of thirty days, to allow to the prisoners the opportunity of sending other messengers in lieu of those arrested or obstructed by the prosecuting parties, and to afford time to those who have hitherto escaped arrest to make their way back to Canada. And further deponents saith not, and have signed.

(Signed) BENNET H. YOUNG,
MARCUS SPURR.

Sworn before me at Montreal, this tenth day of February, 1865.

J. SMITH, J.S.C.

That in addition, Mr. John G. K. Houghton had been despatched to Washington by the prisoners to make a direct appeal to the President for a pass to allow him to proceed to Richmond, but had been refused, as appears by the following affidavit:

PROVINCE OF CANADA, *Lower Canada, to Wit.* } DISTRICT OF MONTREAL.

In the matter of the demand of the United States of America for the extradition of Bennett H. Young *et. al.:*

John G. K. Houghton, of Montreal, in the district of Montreal, Esquire, Advocate, being duly sworn, deposeth and saith: That on the twenty-fifth day of January last past, at the written request of the said prisoners, which is hereto annexed, marked A, deponent proceeded to Washington for the purpose mentioned in the said request. That on the thirtieth day of said January deponent wrote and sent to the Hon. William H. Seward, at Washington aforesaid, the letter herewith produced, marked B; which letter was by him received the same day, and an answer thereto was also on the same day returned to deponent, which answer this deponent received the next day, and which is herewith also produced, marked C; and that the letter of deponent and the documents therein referred to were also returned to deponent in the said letter. That on the thirty-first day of said January, deponent obtained an interview with His Excellency the President of the United States, and urged upon him to grant the permission which deponent had been required to procure; But that His Excellency declined to grant such permission, or even to allow deponent to proceed to General Grant's army, that this application for documents might be sent over to the army of General Lee by flag of truce or otherwise. His Excellency's words being in speaking of the said prisoners, that that they were rebels; that they had been cutting and slashing around; and that he did not see that it was any part of his business to help them. That, however, His Excellency requested deponent to endeavour to see the Honorable W. H. Seward on the subject, and gave to deponent a card for Mr. Seward, on which His Excellency wrote the following words: "Hon. Sec. of State, please see this gentleman, who is the gentleman from Canada spoken of yesterday. A. Lincoln. Jan. 31, 1865." But that on presentation of the said card by deponent in person at the office of Mr. Seward, accompanied by a request that deponent might be permitted to see that Honorable gentleman, said request was peremptorily refused. That deponent thereupon applied to the *Charge d'Affaires* for Her Most Gracious Majesty at Washington, to make to the United States Government the request which deponent had been authorized to make, or to request officially the

honor of an interview with the Honorable Mr. Seward for deponent, or to accompany deponent to the department of State to endeavor to aid deponent in procuring an interview with Mr. Seward,—all of which requests were refused. That thereupon deponent wrote a letter to the Honorable Mr. Seward, a copy of which is herewith produced, marked D, and awaited a reply thereto, in conformity with its contents, but that no reply thereto was sent to deponent; and that deponent was consequently compelled to leave Washington without having been able to effect the object for which he went there.

And deponent hath signed.

(Signed) J. G. K. HOUGHTON.

Sworn before me at Montreal, this tenth day of February, one thousand eight hundred and sixty-five.

(Signed) J. SMITH.

The following are the papers referred to in the foregoing affidavit:

A.

Montreal, Jan. 25, 1865.

Mr. J. G. K. Houghton:

Dear Sir,—You will will please proceed to Washington for the purpose of seeing the President or other official, and, if possible, obtain a pass permitting you to proceed to Richmond; and, if, possible, you will please go on to Richmond, and take the necessary steps to procure the necessary evidence to our defence.

(Signed) BENNET H. YOUNG,
1st Lieut. P. A. C. S.
MARCUS SPURR,
SQUIRE T. TEVIS,
C. M. SWAGER,
W. H. HUTCHINSON.

(True copy—J. G. K. Houghton.)

B.

Ebbitt House, Washington, D.C., 30th Jan. 1865.

SIR,—I have the honor most respectfully to enclose for your perusal the following documents:

1st. A letter from Messrs. Bennett H. Young, 1st Lieutenant P. A. C. S.; Marcus Spurr, Squire T. Tevis, C. M. Swager, and Wm. H. Hutchinson, now prisoners in Montreal, held on an application for extradition by the United States, in the matter of the St. Albans raid.

2nd. Stamped copy of an affidavit of Bennett H. Young and Marcus Spurr, two of the above named prisoners, with the order of the Judge granting the delay of thirty days in the said affidavit applied for on behalf of all the above mentioned prisoners.

3rd. Stamped copy of an application by the said prisoners to be remanded to the gaol at Montreal until the tenth day of February next, in view of the above mentioned delay for the adduction of evidence having been granted.

As your Excellency will perceive, the affidavit enclosed is the basis of an application for a delay of thirty days in the investigation of the charge against the said prisoners for the purpose of procuring evidence from Richmond, as stated in the affidavit, necessary and material for ther defence, and which they are unable to procure in Montreal or Canada.

The letter referred to authorizes me to proceed to Washington for the purpose of obtaining a pass to proceed to Richmond with that object.

And the aim of this present application is to solicit from or through your Excellency such a pass or letter, or such recommendation to the President of the United States or such other officials as it may be necessary to apply to in this matter and with this end.

I would respectfully refer your Excellency to the concluding portion of their affidavit, wherein the prisoners depose that their sole and only reason for making this application is to place the whole truthfully before the Judge before whom the proceedings for extradition are pending; and I feel confident that in a matter like this, involving issues of life and death, and grave and momentous questions of international law; one too in which the United States of America with their whole power are arrayed upon one side, and five simple soldiers, the senior of whom is but a subaltern officer, upon the other; your excellency will not refuse, or advise the President or his Government to refuse, these prisoners an opportunity for a full and complete exposition of the facts, or permit or advise that the law officers of a great nation should be permitted to seek a partial or *ex parte* judgment.

I would also urge upon your Excellency the fact that, acting in their interest and under their instructions, I have made this application openly, and not sought in any way to evade the military or civil regulations of the United States.

In the name of humanity, therefore, and relying upon the universal practice everywhere prevailing of permitting persons accused of a crime every facility for obtaining evidence necessary and material for their defence and relying also upon the generosity which actuates great nations in dealing even with their enemies, I humbly refer to the enclosed documents and make this applica-

tion for a pass or permit to proceed to Richmond, and for all the necessary documents, letters or recommendations necessary for the purpose of procuring all the documentary evidence in this case on behalf of the above mentioned prisoners, whose extradition in the matter of the St. Albans raid is now sought for; and I assure your Excellency that I will strictly and conscientiously observe such orders or regulations as may be given to me for my guidance while upon the route.

I would also anxiously solicit the favor of an interview with your Excellency, and an immediate reply, as hours are now of moment.

I have the honor to be, Sir, your Excellency's most obedient servant.

(Signed) J. G. K. HOUGHTON,
Advocate,
Attorney for the prisoners whose extradition in the matter of the St. Albans raid is now demanded.

To His Excellency W. H. Seward, Secretary of State, U. S.

(Copy.)

C.

MEMORANDUM.

Department of State, Washington,
Jan. 30, 1865.

J. G. K. Houghton, Esq., advocate and attorney for the prisoners whose extradition in the matter of the St. Albans murders and robberies has been demanded, is informed that the Government of the United States can hold no communication or correspondence with him upon that subject. The prisoners, if they submit themselves to the authority of the United States, need no foreign mediation. So long as they remain under the protection of a foreign government, and a demand upon that government for their delivery to the United States is pending, communications concerning them can be received only from that foreign government through the customary channels of national intercourse.

A copy of the papers submitted by Mr. Houghton have been taken, and the originals are herewith remitted to him, and he is expected to leave the United States without crossing the military lines, or attempting to enter the scene of insurrection, or to communicate with the insurgents.

(Signed) WILLIAM H. SEWARD.

(Copy.)

D.

Room No. 38, Ebbitt House,
Washington, D. C., January 31, 1865.

To the Hon. W. H. Seward, Secretary of State, U.S.:

SIR,—I have the honor to acknowledge the receipt of your communication marked "Memorandum," and dated Department of State Washington, January 30th, 1865, informing me, amongst other things, that the Government of the United States can hold no communication with me upon the subject of the St. Albans' raid, and also that I am expected to leave the United States without crossing the military lines or attempting to enter the scene of insurrection, or to communicate with the insurgonts.

I would, however, most respectfully submit for your Excellency's consideration, that this morning, at about the hour of ten o'clock, a.m., at an interview with His Excellency the President of the United States, the President, although refusing me the pass or permit to proceed to Richmond, for which I have applied to your Excellency, and then did apply, referred me to you, and gave me a card of recommendation or order, addressed to the Honorable Secretary of State, of which the following is a copy:

"Hon. Secretary of State:

"Please see this gentleman, who is the gentleman from Canada spoken of yesterday.

"(Signed) A. LINCOLN.

"January, 31st, 1865."

Previously to receiving your memorandum, I presented this card to your Excellency's Secretary, to whom I was referred on the first occasion of my seeking an interview.

That gentleman, however, declined to report it to yourself, or in any way to facilitate an interview.

I would respectfully, but firmly, again ask for an interview with your Excellency, and an opportunity of personally urging upon your favorable consideration my application for a pass to Richmond, for the purpose of procuring the necessary and material evidence required by my clients; and I would venture to urge that if any technical or diplomatic obstacle ever did exist against my holding any communication with your Excellency or the Government of the United States, this recommendation or order signed by the Chief Executive officer must certainly waive and annul it.

I would also remark that the prisoners for whom I am acting are not now under the protection of a foreign government, technically speaking; but that they are held by the Government of Canada, subject to the provisions of a treaty for the extradition of felons, and by that treaty their guilt must be established before an extradition

can be made, and that the proof of their culpability and liability to extradition under that treaty, or their freedom from its provisions, can only be maintained by a full exposition of all the facts of the case, and that the object of my application for a pass is simply to enable them to prepare such an exposition. The case is a simple action at law. According to the spirit of that treaty then, and by law and justice, the United States being the plaintiffs, and the prisoners the defendants, the legal agents of the defendants should not be precluded by the plaintiffs from any opportunity of procuring documentary evidence necessary and material for their defence.

I would also respectfully, but firmly, except to the commencement of your Excellency's memorandum, in which I am styled advocate and attorney for the prisoners whose extradition in the matter of the St. Albans murders and robberies is now demanded, and would remind your Excellency, that the acts with which they are charged cannot be officially termed murders and robberies, until they are so pronounced by the judicial tribunal before which they are now arraigned.

On behalf of these prisoners, therefore, while thanking your Excellency for the assurance that if they submit themselves to the authority of the United States they need no foreign mediation, I renew my application for a pass to Richmond for the purpose of obtaining that evidence which is necessary and material for their defence; and as hours are now of consequence, I shall assume that a failure to receive the necessary pass or documents by four o'clock p.m. to-morrow, is of itself a second distinct refusal to this my second written application to your Excellency for that purpose, and in that event shall forthwith leave Washington *en route* for Montreal.

I have the honor to be, Sir,

Your Excellency's most obedient servant,

(Signed) J. G. K. HOUGHTON,

Advocate,

(Attorney for prisoners whose extradition in the matter of the St. Albans raid has been demanded).

[Copy.]

The *Hon. Mr. Abbott* then stated that on these affidavits it was submitted that the prisoners had done every thing in their power to carry out the object for which delay had been granted them, and that such delay should be extended for a further period of thirty days.

Mr. Johnson, Q.C., rose to oppose the application, contending that it was a mere question whether our laws were sufficient to give effect to the treaty with a foreign power. If this application could be made now, it could be made a hundred times, and be as perfectly

effectual the hundredth time. The prisoners were resisting the application that the investigation should proceed, and complaining that his Honor did not enforce a jurisdiction he did not possess. The prisoners might oppose their trial for want of such evidence in their own country, but not here. It had been evident from the first that the production of the evidence would be denied. Mr. Seward said in effect: "We will not furnish you with evidence to elude trial, but you shall have it when you are placed on trial." And that was no doubt a correct view of the law with regard to the duty of the American government.

Mr. Devlin followed, saying that when the application for delay was granted on the 10th of January, he had said that on the expiration of thirty days they would be prepared with another. If this application was granted, the ingenuity of the Counsel for the defence would, at the end of the thirty days, furnish them with another pretext. They had had since the 19th of October to prepare for defence. Could they, after this indulgence, insist on another appllication? He understood that delay had been granted to the prisoners on the understanding that when the delay had expired they should proceed with their defence, in accordance with the judgment of the Court on the 10th January. He trusted it would not be suspended on account of Mr. Houghton's being refused to be allowed to proceed to Richmond. Was it the fault of the Court? The want of documents from Richmond was immaterial, as the prisoners were not going to be tried, but were only put upon a preliminary investigation. Even supposing the offence had been committed in this Province, the Court would not have granted the delays which it had already done with so much leniency towards the prisoners, who relied more on the ingenuity of their Counsel than the goodness of their cause. If the application was granted, many would come to the conclusion that the proceedings would never arrive at that stage when investigation would be permitted. In conclusion, he would say that if the Counsel for the defence managed to get another delay they would have done their part towards the abrogation of the extradition treaty; and he asked his Honor to refuse the application.

Mr. Bethune said, that since the time of the first application, the case of Burley had been decided by four Judges, adopting the view that questions, such as the prisoners desired to raise, could only be tried in the United States when they were put upon their trial. He apprehended his Honor did not pledge himself when he granted the first application for delay, to grant another if that failed. When the former application was made, there was some hope that the evidence might be obtained; now, there was none. He then went on to review the efforts made by the prisoners on

this behalf. A direct application had been made to the U. S. Government, and refused, and the ports of the Confederacy were blockaded. If his Honor granted the application, the result would be a mere delay of thirty days. The U. S. Government had said in reality, When you put yourselves within our jurisdiction, you shall have the evidence you require. Could his Honor presume the prisoners would be unfairly dealt with? In the case of the Savannah, the prisoners had not been convicted, as no verdict was returned, because the jury were divided. In conclusion, he again urged that delay would be ineffectual, and should not be granted.

The *Hon. Mr. Abbott* said, that the affidavit stated that the prisoners had reason to believe that some of those who had been sent might yet be successful in reaching Richmond, and asked additional time to send others. He then went on to refute the propositions of the learned gentlemen who had preceded him, which he argued were threefold, namely, that the prisoners were not entitled to any investigation as to their guilt; that this being the fact, there ought to have been no delay; and that further delay could be of no use, since the evidence required could not be procured. The Court, he said, ought to be put in possession of the whole facts of the case, before it could decide if the offence was one which came under the extradition treaty. The fact was not denied that the prisoners made an attack upon the town of St. Albans, and partially sacked and set it on fire; but the additional facts which they desired to prove, namely, that they were Confederate soldiers, acting under a duly commissioned officer, authorized by their government, through its agents; were denied. They contended they could show that they were foreigners *quoad* the people of the Federal States; owing their allegiance to a nation at war with the Federal States;—soldiers of that nation; and acting under the orders of the constituted authorities of that nation. Supposing these facts to be proved, would they not conclusively show that there had been no offence within the meaning of the Ashburton Treaty, and therefore, that the Treaty and the statutes based upon it, did not apply to this case at all? It was impossible to deny this; and his learned friend would not contend they ought to be extradited, if the allegations they made were true.

Mr. Bethune said that was a question the United States had a right to try, and that it could have no effect here.

Hon. Mr. Abbott said, he certainly did not expect to hear his learned friend assume such a position. It would place the Judge in the position of a mere ministerial officer; entirely deprive him of all judicial discretion; and render the limitation of the right of demanding extradition,—which was effected by the precise description of the crimes for which it might be demanded,—practically a

dead letter. Every general in the Confederate armies, who took refuge here, could be extradited as a murderer. Such a doctrine, he ventured to say, was entirely unsustained either by principle or precedent, by the treaty itself, or by the mode in which it had been carried out. And if the statements of the prisoners were true and were proved, their extradition would be revolting to the sense of justice of the civilized world.

The presumption of a fair trial was one which we were certainly bound to recognize, and did recognize in an eminent degree in the Courts of the United States, when the passions of the people were not aroused; but it was a mockery of the most cruel kind to talk of such a trial in the case of these men. They would be placed before a Court and jury personally hostile to them; composed of enemies inflamed against them to an unprecedented degree by the virulence of the struggle between the two sections. The fair trial they would probably get would be such a trial as Lieut. Davis got, who was under sentence of death, merely for asking for evidence for them; and the severity of his treatment for a minor offence, shewed what they might expect who had sacked and burned a Northern town. Or they would get such a trial as the crews of the privateers and men of war of the Confederate States got, who in the face of their recognition as lawful belligerents by the civilized world, and by the clearest principles of international law, were put upon their trial as pirates—and were so declared to be from the Bench. And though the crew of the Savannah had escaped conviction notwithstanding the Judge's charge, in consequence of a difference of opinion among the jury, others had actually been convicted as pirates.

If the evidence required was material, the Judge had acted wisely and humanely in granting delay. And now that a further delay was asked, because the first had proved insufficient—those who resisted the application were those, who by their own acts had rendered further delay necessary. Why did the prisoners want delay? Because they were refused by the prosecutors a pass for one messenger; because the prosecutors had hanged or were about to hang another, and because their precautions were so carefully taken to prevent communication that the others had not been successful. Such an objection from them was a violation of the simplest rules of justice, and should receive no weight from a Court administering justice by those rules.

Mr. Laflamme, Q.C., and *Mr. Kerr* followed on the same side.

His Honor *Judge Smith* said, that in granting the former application for delay he had carefully abstained from giving an opinion as to the materiality of the evidence proposed to be offered; and had not in any respect admitted any obligation to grant the delay that had been asked for, and had been awarded. No precedent or

argument could, therefore, be drawn from that, in favor of the present application. But the argument had taken such a turn that he now felt called upon to intimate, at least in general terms, what his views upon it were. He certainly could not admit that his functions were purely ministerial, and that upon certain affidavits or depositions being laid before him, he was bound to commit for extradition. He had the right, and it was his duty, to hear all that was to be said on both sides, and to judge whether reasonable cause existed for believing that one of the crimes specified in the Ashburton treaty had been committed, and that the prisoners were the persons who had committed it. He referred to the familiar illustration he had before used of a person killing another and being charged with murder—if it was shewn that such a person had killed the deceased in self-defence, it would be impossible for him to order his extradition. So also in the case of a woman killing a man in defence of her chastity. He would not be satisfied with the evidence that she had taken life—if evidence was also produced to shew that the cause for which she did so, justified it; or rather took away from the act the characteristic of the crime of murder. This was his opinion, and he could not feel himself justified in departing from it, whatever may have been the nature of any recent decision upon the subject. So it would be in the present case also, if by evidence placed before him the acts committed by the prisoners were withdrawn from the purview of ordinary municipal law, and shewn to be properly liable to be judged by the principles of international law alone. The treaty of extradition was intended to meet cases of ordinary crime—of the nature specified in it, not offences committed against each other by belligerents, recognized by Great Britain as being engaged in warfare. This was the doctrine evidently held by all the English judges in the Gerity case. The evidence of the act done in that case was conclusive; while the evidence of any belligerent character in the assailants was of the feeblest character, consisting merely in a statement that they acted on behalf of the Confederate States, which, it was asserted, was equivalent to hoisting the Confederate flag; and it was for that reason that the Judges declared that they could not say that the magistrate had not sufficient grounds for committing them. But if they had been prepared with proof of their authority —if they had produced their commission from the Confederate Government; it was plain from the language of the Judges that their conclusion upon that point would have been different. But the affidavits produced do not state with precision what was the exact nature of the evidence to be adduced; and he was, therefore, unable to judge whether or no that evidence, if obtained, would be material to the issue. As to the other branch of the argument, it should be

remembered that the United States were unhappily engaged in a war of gigantic proportions, and that it appeared to be a part of the policy of that war to beleaguer the capital city of the Confederate States as closely as possible. It was probably impossible to relax this state of things, and in any case it was a matter over which he could exercise no control, and which could not affect his decision. If he held that the action of the Federal Government in preventing access to Richmond should entitle the prisoners to further delay—he should virtually hold that the investigation could not be proceeded with till the war terminated. He must, therefore, refuse the application for further delay.

It was then agreed that the examination of the witnesses should be proceeded with on the following morning at half-past ten. And the Court adjourned.

EVIDENCE FOR THE DEFENCE.

11th February, 1865.

John G. K. Houghton, of Montreal, Advocate.—On the twenty-fifth of January last, I was engaged to proceed to Washington to get a pass to go to Richmond, to obtain the documents necessary for the prisoners.

Mr. Bethune objected to this as irregular and irrelevant. Objection overruled.

I arrived in Washington on Saturday morning, and immediately attempted to obtain an interview with the President, but did not succeed until the thirty-first of January, when I had an interview with the President, and asked for a pass to go to Richmond for the necessary evidence for the St. Albans raid. The President refused to give me a pass. I used every effort to induce the President to give me this pass; he said "No, I will not; these men are rebels, they go cutting and slashing around, and I do not see that it is any part of my business to help them;" these are the exact words. I again urged my request upon the President, and finding that I was unable to succeed, I asked for a pass to go to General Grant's head quarters, and from thence to forward a messenger to Richmond to procure evidence; the President refused. I endeavored to influence him again, when he said "You can see the Secretary of State," and distinctly refused to give it himself. I had some correspondence with the Secretary of State, the Honorable Mr. Seward. The purport of this correspondence is correctly shown by the papers produced with my affidavit yesterday. The evidence I was to obtain was documentary. The principal instrument of evidence I was to obtain, was the copy of any general order of the Government of the Confederate States recognizing what is known as the St. Albans raid, that is the acts of these prisioners.

Cross-examined under reserve.—I was employed by the prisoners

through their agents, by a letter which I fyled with my affidavit yesterday. I have not personally had any conversation with the prisoners. I was never informed by the prisoners, through their agents, or by any one, that President Davis had refused to recognize the St. Albans raid, and further, I say not, and have signed.

(Signed) J. G. K. HOUGHTON.

William W. Cleary, of Richmond.—I am an Attorney and Counsellor-at-Law. I have occupied myself lately in endeavouring to procure the passage of a messenger to Richmond on behalf of the prisoners. One Lieut. Samuel B. Davis was dispatched on the 10th of January last from Toronto; he carried through a written paper to the Confederate government, asking that the authority for the St. Albans raid should be sent to Montreal before the tenth of this month; the precise document required was any general order that might have issued authorizing the St. Albans raid. On the 14th of January last, another gentleman was sent, carrying the same request, and the same paper. On the 15th, a third messenger was sent for that purpose; and on the 22nd or 23rd January last, we heard that said Lieutenant Davis had been captured, and thereupon another messenger was dispatched to Richmond for the same purpose. No intelligence has been received of any of them having succeeded in reaching Richmond, or as to their fate, except Davis. Davis had previously passed safely through the Federal lines.

Cross-examined under reserve of objections.

Question.—What are the names and places of abode and occupation of the three messengers other than the said Davis, whom you assert were dispatched to Richmond?

Objected by *Mr. Abbott* on the grounds—1st, that an answer would defeat the object of their being sent; 2nd, would imperil their lives; 3rd, that their names and abode were immaterial Objections maintained.

The witness was then ordered to stand down for the present.

William L. T. Price.—For the last two years I have been a soldier in the Confederate service. At the time I was captured, I belonged to General Morgan's command. I know Bennet H. Young, one of the prisoners. I have known him as far back as my memory extends. He is a native of Jessamine county, State of Kentucky, of which I am also a native. I did not belong to the same command as Young; but I met him in the service. He was a soldier in the Confederate army. He belonged at that time to Morgan's command. The date of my meeting with him was previous to my joining that command. I was one of the soldiers under General Morgan during his last raid in Kentucky. The advanced

guards were dressed in citizens clothing, and so were Morgan's command always dressed, except some Yankee garments and overcoats. Bennett H. Young first raised the Confederate flag in Jessamine County—that is, he was the first person that raised the Confederate flag there that I know of.

Cross-examined—I have been in Canada six weeks. I stopped at a private boarding house in London, Canada West. I was never in Canada before, or in the State of Vermont. I know also Mr. Teavis, who comes from Jessamine county also. I have heard of Mr. Spurr. I have not seen Bennett H. Young for twenty months, until I saw him here. I then saw him engaged in a raid under Colonel Cluke, in the uniform used by Morgan's command. The overcoats worn by the command of Morgan, mentioned in my examination in chief were Yankee overcoats. Morgan's command generally wear the clothes of citizens. They are gentlemen.

Question.—Did Morgan's command carry on raids by going into towns by twos and threes, registering themselves at hotels under false names, and carrying only, as arms, concealed weapons?

Answer.—I do not know that it was a regular policy of the command.

(Signed) WILLIAM L. PRICE.

Henry W. Allen.—I am aged nineteen. I was first under the command of General Buford; afterwards in the 14th Kentucky cavalry. I was also engaged as a clerk in the Adjutant-General's office. I know two of the prisoners, namely, Marcus Spurr and Bennett H. Young. I knew them as soldiers in the Confederate army; they belonged to the State of Kentucky. I never saw Young in the army. I saw him in prison, as a prisoner of war. They were in the 8th Kentucky cavalry. I know personally that Marcus Spurr was in that regiment. I ascertained when in prison, that Young belonged to that regiment. The prisoners were distributed in the prison according to their regiments and companies when I met Young there, and he was classified as belonging to that regiment.

Cross-examined.—I now reside in the city of Toronto, where I have lived for about a month. I came to Canada on the tenth of December last. I saw said Bennett H. Young and Marcus Spurr for the last time in the fall of 1863, at Camp Douglas, Illinois; they escaped from there. I am not aware that they came to Canada then. I have heard that the said Young was in Toronto in the winter of 1863 and 1864; but I do not know it personally.

And have signed.

(Signed) H. W. ALLEN.

William Pope Wallace.—I knew one of the prisoners in the Confederate States, namely: Mr. Huntley, who answers to the name of Hutchinson. I saw him at Wilmington, North Carolina, in February, 1864. His name in full is W. H. Huntley. I do not know what his first initial represents, but I understand his second to be Hutchinson; he is a citizen of Georgia. He was a soldier in the Confederate army when I saw him, in 1864. He exhibited to me some papers at Wilmington; one of them was a detail by which he was sent out of the Confederacy. A detail, as I understand it, is an order from military men to their subordinates to do any thing. The paper now produced and marked K was shewn to me by said Hutchinson at Wilmington. (Paper K is a passport to *Wm. H. Huntley* dated January, 1864, signed by James A. Seddon, secretary of war, and J. P. Benjamin, secretary of State, and sealed with the seal of the Confederate States). I had previously been an officer in General Preston's Staff, and had recently resigned. I have frequently seen documents of the same description as document K. It is known as a passport. The seal appended to it I do not recognize. I suppose I have seen frequently such seals, but I never took particular notice of them. I recognize one of the signatures appended to that document, that is, the signature of James A. Seddon, secretary of war, which I have seen very frequently, and am acquainted with, and to the best of my knowledge and belief, it is the genuine signature of Mr. Seddon, secretary of war.

Cross-examined under reserve.—I have been in Canada since June last, with the exception of two month's absence from the Province. I know all the prisoners. Three of them I only knew since they were arrested for the St. Albans raid, that is Mr. Spurr, Teavis and Swager, the other two, I knew before, that is Huntley and Young. I formed the acquaintance of the three first named about two months after their arrest and while they were in gaol here. The Wallace arrested before is no relation of mine. I was absent for two months previous to Christmas last. I do not know where any of the prisoners resided before the nineteenth of October, or six months prior thereto. I saw Young and Huntley, in Halifax, about May last. I do not know where they were going, they were staying at a Hotel; they were not engaged in any business. Mr. Huntley said he was going to Bermuda, and Bennett H. Young said he was going to try and run the blockade. I was in Montreal, on the 19th of October last; I left Montreal, about six or eight or ten days after the raid, for Halifax, by way of Portland, and I returned by St. John's on the overland route. My companions were General Preston's family. I know all the prisoners here and one who is absent, but who was also engaged in the raid of St. Albans. I do not know how many were engaged in this raid.

(Signed,) W. P. WALLACE.

Joseph F. Bettesworth.—I have been examined before in this case. I have already said that I knew Bennett H. Young and Marcus Spurr in Chicago in August last. At that time there were a good many Confederate soldiers there. A large number were collected there for some special purpose. They went on with the organization for which they were assembled there. One part of the object for which they were there has since been carried out, as I understand. Their chief object there was to release the prisoners at Camp Douglas. All the Confederate soldiers there were in communication with each other, and knew what was going on. Prisoners Young and Spurr were there also, and Collins, who was previously in custody on a charge before Judge Coursol. After the expedition for the attempt to release the prisoners had been put off, I heard from several persons there (Confederate soldiers) that said Young was to lead a party on some other expedition, and that there was to be a division of the Confederate soldiers there, before said Young undertook this other expedition. This was well understood and discussed among the Confederate soldiers, and that said Young had a commission and was going to lead a party. I heard one Confederate soldier state that he had been requested to go on this expedition with Mr. Young, and he subsequently did go. This was Mr. Collins. I was not asked to go on Mr. Young's expedition; that is, I cannot say that I was asked. I had some conversation with Mr. Collins on the subject. Mr. Collins told me in this conversation that Mr. Young had a number of soldiers going with him, and that he, Collins, had another expedition in view, and did not intend joining Young at that time. I understood these raids were all authorized by the Confederate Government. They were not proposed to me for any private benefit, and we intended making them for the purpose of serving our Government, and not ourselves. I did not understand the precise spot Mr. Young was to attack, but it was on some part of the Northern frontier of the United States. The arms and material of war stored in Chicago were, I understand, for the purpose of these raids, and for the use of any recruits we might get.

Cross examination declined.—And further saith not, and hath signed.

(Signed,) J. F. BETTESWORTH.

Thomas M. Stone.—I resided in Richmond, Kentucky, up to the time of the breaking out of the war, and part of the time since in the Confederate army, part of the time in prison, and the latter portion of it in Canada. I escaped from prison at Camp Douglass, and came from Chicago to Canada. I belonged to the seventh Kentucky cavalry, second brigade of Morgan's command. I know

all the prisoners. I recognize the prisoner, Mr. Teavis, as being a relative of mine, and having been in the same Company with myself, in the army, and I have seen him also in several battles. He was taken prisoner by the Federals on the Ohio Raid in July, 1863. He was taken to Camp Morton. He was a citizen of the State of Kentucky, and from the same County as myself. I saw all five prisoners in the United States last autumn, four of them in Chicago last August, viz.: Young, Spurr, Hutchinson, and Teavis, and I saw Swager in Vincennes, in Indiana. By Hutchinson, I mean the prisoner answering to that name on this examination. I do not know by what name he was known in Chicago, but his real name is Huntley. There were probably sixty or seventy Confederate soldiers in Chicago at the time mentioned. I saw about fifty myself, and I understood there were many more there at the time; our object was to release the prisoners at Camp Douglass.—This expedition failed, and upon its failure another expedition was organized by Mr. Young, and another was organized by another gentleman, whose name I do not wish to mention. Mr. Young's expedition was against the town of St. Albans, but upon a little more extended plan than was carried out; one of the objects was to burn the town. I spoke with Mr. Young about the expedition against St. Albans—this was at Chicago; before he left, he said he was going immediately to St. Albans, and that he had the men to go. I was spoken to by Mr. Young to be one of the party, and I also spoke to Captain Collins to join the party—the same Collins who was a prisoner here in December last. I decided at that time to join Young's expedition, but finally changed my mind, and went down to Southern Illinois. Collins went with me and left me there, the next I heard of him was that he was a prisoner here. Young was making up this party in the capacity of commander of it. I knew that Mr. Young had the authority to raise the Company in question. I saw his authority in writing, in August of last year.—being shewn the paper fyled by Mr. Young at his voluntary statement, and identified by the letter N on the back of it; I say that it is the authority I saw, and am sure that it is the identical paper. Mr. Young himself shewed it to me. I read it and examined it at the time he shewed it to me, which was before he went to Chicago. I do not remember positively whether he shewed me any other instructions at that time; but I am positive that he did not shew me his commission. He shewed me the paper to satisfy me that he had authority from Richmond, for the purpose of collecting a party as stated in the paper. He stated to me that his instructions were, when he had collected the party, to report to the Honorable C. C. Clay, who was Commissioner for the Confederate States here, and to take his instructions from him. The fact of Mr. Young holding

a commission from the Confederate States was known among the Confederates in Chicago, when he was raising his Company there. There were several depôts of arms there, that is in Chicago, for the use of the Confederate soldiers. I did not see them myself, but it was generally known among the Confederates there that they existed, and I saw them afterwards when they were captured by the Federals in November following. I understood from Young at Chicago that he was to receive his instructions from said Mr. Clay, as he had done before. I cannot say that I understood from Mr. Young at Chicago, that his party was complete; but I understood that he had enough to carry out his expedition. I understood that all the prisoners belonged to Morgan's command except Hutchinson or Huntley. I heard it reported, and it was generally understood that Mr. Young had been a prisoner at Camp Douglass, and escaped, and Mr. Spurr also. I saw a good deal of service when in the army. It would be impossible to describe the dress of Morgan's command, it was so varied; the articles of war provided for a uniform for the command, but the Quarter Master's department never issued them; each man dressed according to his own taste or according to his means of providing them; some would have some part of the Confederate uniform, remainder plain, some in colors. I have seen a whole regiment dressed in Yankee uniform, this of course was after a raid. The principal source from which clothing was obtained, was from captures from the enemy. From the Virginia line to the Mississippi, petty warfare and depredations were carried on by the Federal troops, independent of the action of the regular army. Bands carrying on this kind of warfare were chiefly to be found in Western Virginia, Middle Tennessee, Eastern Kentucky, and the Northern portion of Alabama. It would be impossible to describe the nature of this warfare in general terms, except every kind of villainy.

Objected to by Mr. Johnson and Mr. Bethune.

Question.—State if you know any, of your personal knowledge, particulars respecting this species of warfare and depredations, and particularly cases in which private individuals and banks were robbed; old men, women, and children shot or put to death, though unarmed and unoffending; and the property of private individuals wantonly destroyed by the Federal troops, previous to the 19th day of October last.

The question was objected to by the Counsel for the United States, and the objection was maintained.

The Counsel of the United States object to the whole of this testimony, as irrelevant and illegal; and consequently decline to cross-examine this witness.

(Signed) THOMAS M. STONE.

Charles Albert Withers.—I am a captain in the army of the Confederate States. I was adjutant-general on the staff of General John Morgan at the time of his death; and I was taken prisoner when the General was killed, on the fourth day of September last. I identify the prisoner, Charles Moore Swager. I saw him first in the Confederate army of the Potomac, at the commencement of the war; and I was also in the same regiment: he was in the first Kentucky Infantry. He was afterwards, in December, 1862, in Company H, of the Second Kentucky Infantry. He comes from Kentucky, I believe. I am acquainted with the signature of James A. Seddon, Secretary of War of the Confederate States. Being shown and having examined the document marked M, produced by Young at his voluntary statement, I declare the signature of James A. Seddon, Secretary of War, thereto appended, to be genuine. Being in the Adjutant-General's department, I have seen all the commissions. Instructions and orders for our command passed through my hands officially, and I have consequently seen a great many of his signatures. I know Mr. Seddon personally. I have been in his office frequently, and seen him writing. The document, M, is the only kind of commission we have in our service; it is simply a notification of appointment. I have never seen any other kind of commission; nor is there any other legal commission than this, except that General Morgan was permitted to appoint his own subalterns; which appointments were afterwards ratified in the usual form; and such documents as document M, were then used. I have examined the paper, M, and to the best of my knowledge and belief, it is a genuine document. I have no doubt of it: I have four commissions like it myself. When these commissions are issued, there is an oath accompanies them, which has to be filled up and returned. Being shown, and having examined the document N, produced by Young at his voluntary statement, I declare the signature thereto appended is genuine. I have not a particle of doubt about it; I have seen it too often. It is what is called and known as a detail for special service. From my knowledge of the discipline and management of the Confederate army, I can state that details of this description are of very ordinary occurrence. Whenever any special service is required, a written detail issues from the Secretary of War, or from an intermediate commander; and sometimes it issues in the form of the paper N which is what I call a circular order; and sometimes a special order is issued, which is numbered and marked. The paper N is an order for special service; but as the service is not mentioned, it would come under the order of special or secret service. It is the practice for Confederate officers to organize and send out small expeditions on secret service, ranging from three to thirty men,

within the enemy's lines. I have myself frequently done so, acting as Adjutant-General. Captain Collins, who was a prisoner here in December, was once sent out by me on special service; and commanded a party of twenty-three men. These secret expeditions were always sent into the enemy's lines; sometimes to capture prisoners, burn bridges, for scouting purposes, to destroy communications, and telegraphs; and on one occasion I sent an expedition to burn a town, under General Morgan's orders; there was about fifty men. These expeditions were intended to harass the enemy in every possible way. Sometime in 1862, orders were issued from the Secretary of War and Adjutant General, to form small parties of men as partizan Rangers. I know a number of these men and of companies of partizan Rangers which were in operation; these companies are not attached to the regular army; each company is under its own officer these officers are seldom above the rank of Captain. From the commission and paper N shewn me, I should consider Young and his party to be a party of this description on special service. Parties sent into the enemy's lines on special service never wear any uniform. Being shewn and having examined the paper writing now produced, and marked O, I recognize the signature thereto as the signature of said Mr. Seddon, Secretary of War. I have no doubt about it; it is genuine. I know the Honorable C. C. Clay, the gentleman mentioned in paper O. I knew him when he was Senator for Alabama in the Confederate States Senate. I do not know what position he held here last autumn. I saw him here

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PAPER O.

Confederate States of America,
War Department,
Richmond, Va., June 16th, 1864.

To Lieut. Bennett H. Young;

Lieut.,—

You have been appointed temporarily first Lieut. in the Provisional Army for special service. You will proceed without delay by the route already indicated to you, and report to C. C. Clay, jun., for orders. You will collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, that you may deem suitable for that purpose, and execute such enterprises as may be indicated to you. You will take care to organize within the territory of the enemy, to violate none of the neutrality laws, and obey implicitly his instructions. You and your men will receive transportation and customary rations, and clothing or commutation therefor.

JAMES A. SEDDON,
Sec. of War.

about two months ago. I am aware that there is a state of war existing between the Northern States and the Southern, and has been since 1861. We have in the South a President, Senate, and House of Representatives, sitting at Richmond, and have a regularly organized government and army from the highest to the lowest grades. I know that in June last, Mr. James A. Seddon was Secretary of War for the Richmond Government, and Mr. Davis the President. I am well acquainted with the mode in which the war has been carried on by the Federal troops against the South.

Question.—Are you aware whether or no petty warfare and a series of petty depredations were systematically carried on by the Northern soldiers in Southern territory, in which private property was constantly taken or destroyed?

Objected to as illegal, irrelevant, and foreign to the issues in this cause. Objection maintained.

Question.—Can you state any particular instances in which parties of Northern soldiers have entered the Southern lines in disguise, and taken or destroyed private property?

Objected to. Objection maintained.

Question.—Is it not the fact, that during last summer an immense extent of Southern territory was wholly devastated by Northern troops, and private property to an immense value appropriated by them or wantonly destroyed?

Objected to. Objection maintained.

I do not know Mr. Clay's handwriting.

The Counsel of the United States object to the whole of this testimony as irrelevant and illegal, and consequently decline to cross-examine.

(Signed) C. A. WITHERS.

William H. Carroll:—I was formerly an officer in the Confederate army, holding the rank of Brigadier General. I commanded a brigade, at one time. Mr. James A. Seddon was Secretary of War for the States in June last. I am acquainted with him, and have seen him write and sign his name. I know his signature when I see it. Being shewn, and having examined the documents M, N and O, I should say that the signatures to those documents are the genuine signatures of James A. Seddon. I might be imposed upon by his signature, but I have not the slightest doubt that they are the genuine signatures of the said James A. Seddon. I have frequently seen such papers before. The paper M is the usual and customary form of commission to an officer; it is the same as the one I received myself as Brigadier-General. An oath accompanies it, which is returned by the officer. The officer acts under the paper, and remains an officer until the Senate rejects such appointment. I believe the Senate is

now sitting at its first session since the date of that paper. I have seen all the said papers before marked M, N and O; it was some two or three days after the St. Albans raid. The man who shewed them to me, said they came from Toronto; they were shown to me to see if they were genuine, and to say what should be done with them, and I directed them to be sent to Mr. Abbott, one of the Counsel for the prisoners, and I believe it was done. The prisoners were at St. Johns or in that neighborhood when the said papers were shewn to me. I do not know whether Mr. Abbott had been to St. Johns previous to the time the papers were shewn to me or not.

Cross-examination under reserve of objections.—I do not know in whose handwriting the body of the papers M, N and O, are filled up. The only writing I recognize on the papers is the signatures; it is usual for clerks to fill up the commissions. I do not know who had possession of those papers in Toronto, nor do I know who sent them to Montreal. They were brought from Toronto to Montreal by a person named Hiams; I have only seen him once since he brought the said papers. These papers were shewn to me in the presence of two persons, one named Moore, and the other named McChesney. I do not know his Christian name; he is now in Court, and was residing in Montreal at that time. I did not send for the papers. I was told by some person that they were sent for by Lieut. Young; this was some days after the raid. I know all the prisoners since the raid; I knew one before, that is Lieut. Young; I met him in Canada on his way to the Confederate States last fall a year ago. In the fall or winter of 1863, I met him in Montreal; I think he stopped at the St. Lawrence Hall or the Donegana; I met him once or twice, I cannot say how long he remained in the city. I saw him in Toronto once sometime last summer, I think in July or August. I presumed he had returned from the Confederate States. I am not certain that he went there. I met him at the Queen's Hotel Toronto; this was the first time I met him in Upper Canada; I did not meet him there afterwards. I did not meet any of the other prisoners. I did not see any of the prisoners immediately before the raid at Montreal; and further saith not, &c.

W. H. CARROLL.

Montrose A. Pallen.—I am a native of Mississippi, I have been a Surgeon in the Confederate army; at that time was medical director of a Corps d'Armée. I knew two of the prisoners before I saw them in Montreal,—Mr. Swager, and Mr. Huntley, who answers to the name of Hutchinson. I knew them in the Confederate army; they were soldiers in Mississippi. I know Mr. James A. Seddon, who was Secretary of War last June. I know his hand-writing and signature. Being shewn and having examined the papers marked

M, N and O, I declare that the signature James A. Seddon, Secretary of War, is genuine. I have carefully examined the said three documents, and the documents are genuine. I have seen similar documents to papers N and O, which are called details. I have frequently seen similar documents to paper M; it is the regular commission, the same as mine, and I have always seen the same kind in the Confederate States, except one, which was General Frost's. In that commission the pen was drawn through the words respecting the sanction of the Senate. Being shewn and having examined the paper writing marked P, I believe the signature thereto to be the signature of C. C. Clay. I am acquainted with his hand-writing and signature; his first name is Clement; I believe he was Senator for Alabama. I know that Mr. Clay was in this country. I never saw his papers, but I know that he was a Commissioner of the Confederate States of America.

Cross-examined under reserve.—My attention being particularly called to the figures and dates, that is to the words October 6, 1864, and being asked if the paper on which these words are written presents any appearance to induce me to believe that it was tampered with, I answer that I am not in the habit of handling papers that are suspected of being forged. I do not know where Mr. Clay was on the 6th October last.

Question.—Whose hand-writing is the body of the paper writing P?

Answer.—So far as I am acquainted with Mr. Clay's letters and figures, these look very much like his.

Question.—Will you swear that the word October, or so much of it as is written on said paper, also the figure 6, and the figures 1864, contained in the said paper are in the hand-writing of the Hon. C. C. Clay, Jun.

PAPER P.

Mem. for Lieut. Bennett Young, C. S. A.

Your report of your doings, under your instructions of 16th June last from the Secretary of War, covering the list of twenty Confederate soldiers who are escaped prisoners, collected and enrolled by you under those instructions, is received.

Your suggestions for a raid upon accessible towns in Vermont, commencing with St. Albans, is approved, and you are authorised and required to act in conformity with that suggestion.

October 6, 1864.

C. C. CLAY, JUN.,
Commissioner, C. S. A.

Answer.—I did not see him write it, and consequently cannot swear that he wrote it. I did not see him write his name to the said document. If I were a cashier in a bank in which Mr. Clay had a deposit, and a check was presented to me with that signature, I would pay it. I think this is the first time I ever saw the said paper. I have not seen Mr. Clay for two months. He was here either in October or November last; and further saith not.

MONTROSE A. PALLEN.

William W. Cleary, being recalled, said:

During last summer, and for more than a year previous, Mr. James A. Seddon was Secretary of War for the Confederate Government. I was employed in an official position at Richmond previous to coming here. I was an employé in the Treasury Department, but the duties I performed were connected with the war office. I have seen said Mr. Seddon's signature over a thousand times, and know it well. I have seen him write and sign his name frequently. Being shewn and having examined the papers fyled in this case marked M, N & O, from my knowledge of Mr. Seddon's signature, I have no doubt but that the signatures are genuine. I have seen the commission, the paper M before now; to the best of my recollection it was in the latter part of July last. The prisoner Young then exhibited it to me. He stated to me that he had other instructions in addition to the commission. This was at Toronto. I do not know where he was going then. I am not sure that Young told me he was going over to St. Catherines to see Mr. Clay; all this took place in the latter part of July last or the beginning of August. I know Mr. Clay; his name is Clement C. Clay, jun.; he was an officer of the Confederate Government, and was appointed by the Government a commissioner abroad, and that was his position in this country; I am personally aware of this fact. The last I heard from Mr. Clay was that he was *en route* for the Confederacy. I have since heard of him, from Halifax. I think it was in December last, that he left Canada. I know his handwriting and signature very well. Being shewn and having examined the paper writing marked P, I believe that the whole of it, the body and signature both, are in the handwriting of said Clement C. Clay. I have no doubt of it at all. His handwriting is peculiar and very characteristic, and I could not very well mistake it. I saw that paper for the first time about a month ago. I was previously aware that Mr. Clay had sanctioned the St. Albans raid. I became aware a short time after the raid occurred that he had authorized it. I know this from himself. It was in consequence of my knowledge that he had authorized the raid that I asked to see paper P. The information

I got from Mr. Clay, was that the authority he had given was in writing. He said the paper was in Montreal, and to the best of my knowledge he said it was in the possession of Mr. Abbott. I was aware before the raid that Mr. Young had projected some expedition; but of this raid I knew nothing; I knew that he was in communication with Mr. Clay about some expedition. After the raid I understood from Mr. Clay himself that he had advanced from the Confederate funds sums of money for the defence of the prisoners. I understood from Mr. Clay that the parties not arrested had turned over to him, as Confederate Commissioner, the money captured at St. Albans. I do not know anything about the money that was before the Court. I have seen a great many commissions like paper M; that paper is in the usual form of commissions, when the Senate is not in Session. It is not usual to append any seal to documents of that sort. The Senate was not in session at the time that paper was issued, but is now in session. I believe, according to the Constitution and laws of the Confederate States, that the Secretary of War is the proper person to execute and issue such a commission and such orders as papers M, N and O. Lieut. Young would have been liable to be tried by court martial if he had disobeyed the directions contained in those papers.

Cross-examined, under reserve of objections:

I believe Mr. Clay came here in the month of June last as Commissioner. I do not know where he stopped in Montreal. He was in Upper Canada; his principal place of residence was at St. Catherines. I saw him frequently at the Clifton House, also at St. Catherines. In October last he was residing at St. Catherines. I saw him there in the months of August and September last. He remained in Canada from June to December, and I understood his place of residence was St. Catherines. I do not want it to be said that I said he remained in Canada all the time. I think he left Quebec in the middle of December. I have been informed he left Halifax in the month of January last. I have known the prisoner Bennett H. Young since last July, when I made his acquaintance at Toronto, in Upper Canada. I met him afterwards in Toronto, in the months of August and September. I met him at the Queen's Hotel, where I met him in September, about the first week thereof; he was on his road to St. Catherines, to visit, as I suppose, the Honorable Mr. Clay. I did not see him afterwards. In August last, I met the prisoner Hutchinson, or Huntley, at the Queen's Hotel. I do not know that he went by any other name than that of Huntley. Mr. Young was there at the same time. I saw them in company together. I do not recollect meeting any other of the prisoners. I recollect also having been introduced to Captain Collins, who was one of the persons arrested for the St. Albans raid,

and who was discharged by Mr. Coursol. I met him in August last in Toronto. I have seen some of the other persons who were prisoners, and discharged by Mr. Coursol, in Upper Canada in the month of August last. The said Mr. Clay was both a civil and a military officer. He made his reports to the State Department, which was the civil department of the State, but he had ample powers, both civil and military; but he had no rank in the army. He was not a commissioned officer in the army.

(Signed), WM. W. CLEARY.

James Watson Wallace, of Virginia, on his oath saith:—I am a native of Virginia, one of the Confederate States. I resided in Jefferson in the said State. I left that State in October. I know James A. Seddon was Secretary of War last year. Being shown and having examined the papers M, N and O, I say that from my knowledge of his handwriting, the signatures to said papers are the genuine signatures of the said James A. Seddon. I have seen him upon several occasions write and sign his name. He has signed documents and afterwards handed them to me in my presence. I never was in the Confederate army. I was commissioned as major to raise a battalion. I have seen a number of the commissions issued by the Confederate Government, and the commission of Lieutenant Young marked "M" is in the usual form of all commissions issued in the army, which are always signed by the Secretary of War. I never served; I was incapacitated by an accident, and being then kidnapped by the Northerners.

I was in Richmond in September last. I then visited the War Department. It was then notorious that the war was to be carried into New England in the same way that the Northerners had done in Virginia. When I was in Virginia I lived in my own house until I was burned out, and my family were turned out by the Northern soldiers.

The Counsel for the United States object to the whole of this evidence as illegal, irrelevant and foreign to the issue, and consequently decline to cross-examine.

(Signed) J. WATSON WALLACE.

George N. Sanders.—Being shown and having examined the paper writings marked M, N and O, I believe I have seen similar papers before or of a similar purport, and which I believe to be the same substance as these, the day of the St. Albans raid. I merely looked at the papers at that time to see their general purport, and to have them delivered to the Counsel for the defence of the prisoners. I directed them to be remitted to the prisoner's Counsel; they came from Toronto, I believe, on the application of

Young after his arrest. I know Mr. C. C. Clay, whose name is subscribed to document P. He was then exercising the authority of a Confederate agent, claiming full ambassadorial powers, as well civil as military. I had several conversations with Mr. Clay about the St. Albans raid. He informed me that he directed the raid, and gave the order for it—the St. Albans raid—and Bennett H. Young was instructed by him to carry it out. Mr. Clay told me about the eighth day of December last, a few days before he left, that he would leave such a letter as the paper writing marked P, and which I infer had not been written up to that time. The letter which he said he would write on that occasion was a letter assuming all the responsibility of the St. Albans raid, for which he was responsible. Upon being asked to look at the paper writing marked P again, and the date especially, I say the conversation I had with Mr. Clay had no reference to this paper. Mr. Clay was to leave a declaration in the shape of a letter, assuming all the responsibility of the said raid. Mr. Clay was not here on the 13th of December last. He must have left here early in December last, some few days before Mr. Coursol discharged the prisoners. Mr. Clay instructed me to employ Counsel to defend the prisoners on behalf of the Confederate Government; he left a sum of money to my credit for that purpose. I employed Counsel accordingly. My mission was one of peace. I knew nothing of the St. Albans raid or any other raid. The first information I had of it was after it occurred. Last August I met said Mr. Clay and Young in St. Catherines, Upper Canada; I believe about the time of the Chicago Convention. I am aware that the St. Albans raid has been ordered and approved by the Confederate authorities.

The Counsel for the United States object to the whole of this evidence, and decline to cross-examine.

(Signed) GEO. N. SANDERS.

February 15th, 1865.

Stephen F. Cameron.—I am a citizen of Maryland. I have been in the Confederate service, as chaplain, from the beginning of the war to the present time. I was in Richmond on the 1st February instant.

(The Counsel for the defence produced muster-roll of Company A, 8th Kentucky Cavalry, containing the name of Marcus Spurr; copy of muster-roll of Lagrange Light Guard of Georgia, containing the name of William Hutchinson Huntley; copy of muster-roll of Company B, Colonel Chenault's Kentucky Cavalry, containing the name of Squire Teavis; copy of muster-roll of Company H, Second Kentucky Infantry, containing the name of Charles

M. Swager ; also copies of two letters of instructions addressed to Lieut. Bennett H. Young, dated June 16th, 1864, and purporting to be signed by James A. Seddon, Secretary of War ; the whole purporting to be certified under the hand of J. P. Benjamin, Secretary of State of the Confederate States of America, and under the great seal of the Confederate States of America. The whole marked Z; (to the production of which documents, and of any proof in support thereof, the Counsel of the United States object, as being irrelevant, irregular, and illegal. Objection reserved by the Judge.)

Being shown and having examined the said papers,—I say that I received them from Secretary Benjamin, Secretary of State of the Confederate States. He affixed his signature to them in my presence. I did not part with them until I handed them to the Honorable Mr. Abbott yesterday. The seal was affixed at that time,—that is, the great seal of the Confederate States was affixed to them when he signed them; and he called my attention to the seal. This was in the office of the Secretary of State. I volunteered to go for the papers for the prisoners.

I carried a missive from Colonel Thompson, who arranged with me about going, and supplied the funds. I called upon Mr. Benjamin about an hour after my arrival in Richmond, and he informed me that the papers had been sent by another messenger on the day before. He said that the papers had been sent, that every thing had been sent, necessary to establish their belligerent character and that they acted under orders. The following day I called on the President, by appointment, and asked, that to insure the safe delivery of the papers, I might be entrusted with a duplicate as a second messenger. He readily acquiesced, and expressed great anxiety that they should be so placed as to escape detection, suggesting that the paper containing the great seal should be photographed upon tissue paper, so as to take up less space. Mr. Benjamin being present, explained that the muster-roll would take so much space, that the size of the great seal would be of no consequence. He stated that he had sent the orders under which the young men had acted, previous to their making the raid. He thought that these papers would be fully sufficient to justify their doings, and that they would have full justice done them he had no doubt. The President stated that the prisoners' orders under which they acted having been sent, constituted superior testimony to any subsequent ratification. He expressed some surprise as to the result of Burley's case. I explained to him that in that case the Judge was only a Police Magistrate, accustomed to deal only with petty larcenies, but that in this case it was before a Superior Court Judge who would appreciate questions of International

law. He stated as his reason for not issuing his order in this case, that his general order in the Burley case had been disregarded, and he seemed piqued and indignant at that fact. I told him that if the Confederate States had been as near neighbors as the Federal States, there would have been, probably, a different result. I looked at the papers in the Department of State, to see that the names were affixed; they are precisely in the same condition now as when I received them; I made no request for any particular papers; I merely presented the message with which I was entrusted; I never read the letter with which I was entrusted, and do not know its contents, except that I understood that it was a letter of introduction, and contained the names of the prisoners.

The Counsel for the United States, objecting to the whole of this evidence as illegal and incumbent, decline to cross-examine this witness.

(Signed) S. F. CAMERON.

George S. Conger, of the town of St. Albans.—On the 19th October last, I was in St. Albans, aforesaid; I remember the raid on that day. The first thing I saw was putting some fellows on the green. They were put on the green by force, with revolvers at their heads. There was a guard set over them. I saw them taking horses off some double team. I then saw some ten or twelve of them coming out of the American House yard on horse-back. The town's people were running, some one way and some another, scared seemingly. I heard the discharge of fire-arms. I discharged fire-arms myself on that day. I fired at the raiders. I was armed with the breech-loading carbine. At the lower part of the town, just above one of the banks, I was firing at these parties. I followed them down the street, firing at them, about a quarter of a mile, and kept firing at them all the way. I believe some others of the town's people were firing at them. I saw two or three of the town's people fire at them. I could fire five or six shots a minute with my carbine. I thought those men were Confederate raiders. I thought so because they commenced firing at the people there; they fired at me several times. And when the people called to arms, they said these were Confederate raiders. It was not a running fight until they got out of town. I saw no one firing at them after they got out of town. I saw one house on fire after they passed, it was a store; this was a couple of minutes after they passed it. I did not hear any of the raiders declare what they were. I am nineteen years of age.

Counsel for the United States decline to cross-examine the witness.

(Signed) G. S. CONGER.

William M. Cleary is re-called as a witness:—I recognize the seal appended to the certificate signed J. P. Benjamin, Secretary of State, as being the great seal of the Confederate States of America. I do not remember having seen the seal of the War Office before. I have in my possession the original of the paper first annexed to the said certificate, being instructions to Lieut. Young to report to Messrs. Thompson and Clay, which I now produce, and which is identified by the letter R. The reason why I did not produce this paper or the other papers, N and O, at an earlier stage of the trial, that is, when delay was first asked to send to Richmond, was that after a consultation I had with the Counsel for the defence, it was decided not to produce them until an opportunity had been afforded for getting papers from Richmond, because it was feared that the production of those papers might involve Mr. Clay in a charge of a breach of the laws of neutrality. I cannot state that it is the general rule of the War Office to issue more than one letter of instruction to the same persons at the same time. I have known of its being done, but it is rather the exception. It has been done in cases when the duty was to be performed outside of the Confederate lines, from whence there might be difficulty in communicating with the Government in the event of any unforeseen occurrence, so that the intent of the sending of the party might not be defeated; and the object is to enable the party sent to obtain his orders in different ways. I know of a fact which would account for

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PAPER R.

CONFEDERATE STATES OF AMERICA,
War Department.
Richmond, Va., June 16th, 1864.

TO LIEUT. BENNETT H. YOUNG,

LIEUT.—You have been appointed temporarily 1st Lieut. in the Provisional Army for special service.

You will proceed without delay to the British Provinces, where you will report to Messrs. Thompson and Clay for instructions.

You will, under their direction, collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, as you may deem suitable for the purpose, and will execute such enterprises as may be entrusted to you. You will take care to commit no violation of the local law, and to obey implicitly their instructions. You and your men will receive from these gentlemen, transportation, and the customary rations and clothing, or commutation therefor.

JAMES A. SEDDON,
Sec. of War.

Va., June 16th.

Bennett H. Young being referred to Mr. Clay as well as to Messrs. Thompson and Clay, namely, because he was a particular favorite of Mr. Clay, and was appointed to a commission on his recommendation. I know that he was appointed for service within the enemy's lines, that is within the Northern States. I know that Mr. Clay recommended him for that commission for this purpose.

Question.—Are you or are you not aware that Lieut. Young proceeded to Richmond in May last with the recommendation of the Hon. Mr. Clay for his appointment to a commission in the Confederate army, for the purpose of undertaking raids against towns on the Northern frontier.

Objected to. Objection maintained.

Counsel for the defence declines to cross-examine the witness.

(Signed) WM. W. CLEARY.

Lewis Sanders.—I know Lieut. Bennett H. Young, one of the prisoners; I know the Hon. Clement C. Clay, Jun.; I was present at several conversations between said Mr. Clay and said Lieut. Bennett H. Young, between the 29th of August and the 9th of September last. I heard conversations between them about the attack on St. Albans, which was subsequently made on the 19th of October. The purport of these conversations was that Young was to burn the town if possible, and sack the banks. I am aware that Mr. Clay furnished Young with money to cover his expenses at the said raid. Mr. Clay sent me a cheque for $400 or upwards for Mr. Young, towards the expenses of the said expedition. I gave him the said cheque, and he got the money on it in Montreal; this was about two weeks before the raid. I had no personal knowledge that he got the money, but I presume he did, as there were funds there to meet it.

Cross-examined under reserve of objection.

The conversations above referred to between Bennett H. Young and Mr. Clay all took place in Mr. Clay's private residence, in the town of St. Catherines, in Upper Canada. This cheque that I referred to was drawn on the Ontario bank. I believe it came to me in a letter, and my impression is that it came from Quebec. It is my impression that the cheque was drawn on the Ontario bank here. I was not present when it was presented. I think that cheque was signed by Mr. Clay. It was signed simply "C. C. Clay, Jr.," and the cheque was payable to the order of Bennett H. Young. I believe I saw the said Bennett H. Young in Montreal, about three days before the raid, which took place on the 19th of October last. I also saw the said Marcus Spurr in Montreal about four days before the said raid. I did not see any of the other said prisoners at any time near the period of the raid; and

the nearest time to that date that I saw any of them was in July last; I then saw the said Charles M. Swager at Windsor in Canada West. I did not know any of the other prisoners now here before the said raid. I recollect meeting a brother of Mr. Teavis at Clifton House, before the raid in July last.

(Signed) LEWIS SANDERS.

John B. F. Davidge.—I was admitted to practice at Washington City, in the District of Columbia. The crime of treason is defined in the 3rd Article and 3rd Section of the Constitution of the United States of America, which will be found in the volume of the Statutes of the State of Vermont fyled in this cause.

Question.—If a body of men attack a town situated in the State of Vermont, the said body of men being composed of citizens of the United States, declare that they take possession of that town in the name of an enemy of the said United States, plunder banks and citizens, fire upon the citizens, and retreat in military order from the town, in your opinion do these acts constitute a treason against the United States?

Answer.—I should say so.

Counsel for the United States decline to cross-examine.

J. B. F. DAVIDGE.

Hon. Mr. Abbott here declared the case for the defence to be closed.

Mr. Bethune in rebuttal called:—

John Chas. Dent.—I know Bennett H. Young and Marcus Spurr, two of the prisoners now in Court; I first became acquainted with them in the fall of 1863, then in Toronto; they were both residing there at that time. The said Bennett H. Young and I were living in the same boarding-house. The said Bennett H. Young was then at college at the University of Toronto. I cannot swear that he remained in Toronto more than three months after I became acquainted with him. I knew him for three months.

I saw the said Bennett H. Young either late in the spring or in the beginning of the summer of last year. I saw very little of Mr. Spurr; my impression is that he remained in Toronto as long as the said Bennett H. Young.

Cross-examined.—I believe they had escaped from the Northern States. They had, I understood, been prisoners of war.

JOHN CHAS. DENT.

William L. Wilkinson.—I know Bennett H. Young, one of the prisoners now in Court, and I first became acquainted with him in

the fall of 1863. We boarded together about three months in Toronto. The said Young was at that time studying in the University at Toronto. He remained in Toronto until early in the spring, when he told me that he was going to the city of Richmond, About two months after that I saw him again in Toronto. I only saw him for a short time after that, for about a week or two.

The Counsel for the defence decline to cross-examine.

(Signed) WILLIAM L. WILKINSON.

William Donohue.—I am a Sergeant in the Water Police. I know one of the prisoners, viz: Squire Turner Teavis. I made his acquaintance in the hotel, St. Johns, Canada East, a few days before the raid. I had no conversation with him. I saw no other of the prisoners there before the raid.

Counsel for the defence decline to cross-examine the witness.

WILLIAM DONOHUE.

Erastus Wyman.—I know the prisoner Bennett H. Young; I became acquainted with him during the fall of 1863. I understood him then to be resident in Toronto, and attending the University there. I cannot positively say so, but to the best of my recollection he continued to reside there for six months after I became acquainted with him. I saw him late in 1863. I do not remember seeing him there in 1864. I left Toronto in February, 1864, and came to reside here. I met him on or about the 15th October last, on the train coming from Toronto here; that is the last that I saw of him until after his arrest.

The Counsel for the defence decline to cross-examine.

E. WYMAN.

Nelson Mott.—I recognize two of the prisoners, Bennett H. Young and William H. Hutchinson. These two persons arrived in company with four others on the evening, I think of the eleventh of October last, and put up at Leonard Hogle's hotel, in St. Johns, C.E. These persons remained for some days at the hotel, leaving separately at different times. The person who now answers to the name of Hutchinson, and who registered his name as Jones, left about five o'clock, and as I understood, by the train going to Rouse's Point; this was on the 18th of October last. I do not know the precise day on which the said Young left. They all left scatteringly. I had conversation with the one calling himself Jones, at the hotel, who answers to the name of Hutchinson; while so living at the said hotel, he was receiving newspapers from St. Albans,

Vermont. In the course of conversation he enquired the relative distances of Frelighsburgh and Philipsburgh from St. Albans.

The Counsel for the defence decline to cross-examine.

NELSON MOTT.

Henry Allan. I recognize Marcus Spurr, one of the prisoners; I made his acquaintance in Toronto last winter, in the latter part of January, 1864. He had no business that I know of; he was there for two or three months after that. I saw him here in Montreal, last October, before the raid at St. Albans; he was staying at the St. Lawrence Hall. I saw him in Montreal two or three days before the raid at St. Albans.

The Counsel for the defence decline to cross-examine.

HENRY ALLAN.

James L. Hogle.—I formerly resided at St. Johns, Canada East; I kept an hotel there in the month of October last. I recognize two of the prisoners now in Court, viz: Bennett H. Young and William H. Hutchinson. They put up at my hotel at St. Johns. They arrived with four others, and all put up at my hotel. They arrived on the 11th day of October last, and registered their names in the register which I there kept, and which I now have in Court. The prisoner Hutchinson registered his name as Jones, I think J. A. Jones. They arrived in a body, and three of them left on the Saturday of the same week, as I left home. I cannot say when the other three left. Upon looking at the register, the entry so made by the said Hutchinson is W. P. Jones, Troy, N. Y.

The Counsel for the defence decline to cross-examine.

J. L. HOGLE.

Thursday, Feb. 16, 1865.

Mr. Bethune said the prosecution expected more witnesses, but these not being present, he argued that the prosecution had fully proved a case of robbery against Spurr and Teavis on the person of one Breck; and that he apprehended all the prisoners were equally guilty, as all started with the purpose of plundering the banks. The evidence showed all were in town on that day, as proved by Bettesworth, and after the robbery left the town and fled together into Canada. He then proceeded to quote Hawkin's Pleas of the Crown, chap. 34, sec. 4, p. 148; Hale, vol. 1, p. 534; 1st Bishop, sec. 267; also 2nd Bishop, for robbery, quoting Hawkins. He contended that the prisoners had all arrived at St. Albans with the intention of plunder. They all came there for the purpose of plundering the banks; and as an incident to the

plunder of one of them, they had also plundered the complainant; and they all left there together. As they had assembled there with intent to commit one felony, they were all alike guilty, if any of the party, so assembled, had committed another in the course of the prosecution of the one which they intended to commit. He cited, as an illustration of the doctrine, an instance in which parties were prosecuted for a breach of the peace with intent to resist the police, in which the Court held all equally guilty of the murder of a person accidentally killed, though some of the party were distant and even out of view. With these authorities, he submitted the prosecution were entitled to a warrant of commitment for extradition against the prisoners. They (the prosecution) intended to await the arguments of their learned friends on Monday; and if, in reply, the prosecution quoted any authorities, it would be the privilege of the defence to answer them. It would also be the privilege of the Crown prosecutor to sum up the whole case afterwards.

Hon. Mr. Abbott said it was to be regretted that the prosecution had not told them the grounds they intended to take.

Mr. Bethune said that the ground would be that the prisoners had committed robbery.

Hon. Mr. Abbott continued that the disadvantage would be, that they would have to argue and fortify every point of law and of fact, not knowing what was disputed or what denied by the prosecution. This would greatly lengthen the arguments for the defence which might otherwise have been confined to the real points in issue. The case of the prosecution would only be developed in their reply, and this again would be unjust to the prisoners.

His Honor said that if necessary he would hear the counsel for the defence again.

Mr. Bethune did not care how often they spoke. The case to be maintained was one of robbery.

Mr. Johnson said there was no particular form of procedure in such cases.

Hon. Mr. Abbott said that Mr. Bethune had proposed that Mr. Johnson should sum up, but he denied that the Crown prosecutor had any such right. The real prosecutor was the United States, and after they were heard, the case ought to be left to his Honor.

Mr. Johnson said that with respect to the office of Crown prosecutor, that might be safely left to him.

His Honor thought that the Crown officer was entitled to reply. The case was a Crown case, in so far as it was the duty of the Crown officer to rectify anything wrong; but that whatever Mr. Abbott had to say he would hear him.

The enquiry was then adjourned till Monday at 10.30.

Mr. Kerr for the defence, handed to the Judge and counsel a printed paper containing the following propositions and authorities:

1. That Bennett H. Young was on the nineteenth of October last, a commissioned officer in the service of the Confederate States in command of a party of enrolled Confederate States troops, then in the territory of the United States; a country with which the Confederate States were at war, *quoad* which contest Her Majesty had declared her determination to maintain a strict and impartial neutrality between the contending parties.

2. That the said Bennett H. Young was ordered and directed by his Superior Officer, to whom he had been referred for Instructions by the Government of the Confederate States, to make the raid upon St. Albans, now under investigation.—The Hon. C. C. Clay's letter 6 Oct., 1864.

3. That the tenth article of the Ashburton Treaty is strictly limited in its operation to the crimes recognized by the common law of both countries under the names thereto applied in the treaty. And that the whole of the facts and circumstances of the case must be examined into and weighed by the judge, in order that he may be satisfied that the act of the accused can be justly designated as one of the crimes mentioned in the treaty.—Robbins alias Nash's case. Wharton. Expte Bollman & Swartout Marshall on the Constitution, pp. 33 to 41. The People *v.* Martin & al., 7. N. Y. L. Observer pp. 52 to 56. 4 Op. Attys. Gen., p. 202.

4. That acts of hostility committed by the troops of the Confederate States, a recognized belligerent within the territory of the Federal States, the other belligerent, and political offences arising out of popular commotions, insurrections, or civil war do not come within the provisions of the treaty.—Presdt. Tyler's message. Wheaton, Lawrence's edition, pp. 236, 24 *in notis*.

5. That the United States no longer exist. That since the ratification of the treaty of 1842, five or six States have been admitted into, and nine or ten States have seceded from the Union—that between two portions of the former republic, civil war has been and is now raging—and that thereby the sovereignty, which subsisted only in the Union, was immediately upon the commencement of the war dissolved.—2 Burlamaqui, pt. 4, cap. 7, §38, p. 210.

6. That the war now raging between the Federal States and the Confederate States is what is called a perfect war. That both parties are belligerents, and entitled to all belligerent rights given by war to sovereign governments.—Wheaton, 40, 523, 524, 520 *in notis*, 1, 2, 847, 850 *in notis*. The Tropic Wind, Monthly L. Reporter 1861, p. 151.

7. That during a war between two nations or governments, the

municipal criminal codes of the belligerents are silent and inoperative *quoad* acts committed by the troops of either of the belligerents within the territories of the other. The law of nations alone furnishing the rules for the government of armies or detached bodies of troops on hostile territory.—3 Burlamaqui, pt. 4, cap. 5, § 8, 12, 13, 14, 15, 16. 2 Azuni, pp. 64, 18. 2 Rutherforth, B. 2, cap. 9, § 15, pp. 540, 546, & 551.

8. That under the law of nations, in what is called a perfect war, the rule is that the person of the enemy is liable to seizure, and his property to confiscation, seizure, or capture, wherever found.—3 Phillimore pp. 115, 116, 120, *in notis* (132, 8 & 9 note q.) Lawrence's Wheaton, pp. 518, 519, 596. Lee on Captures, p. 141. Bynkershoek, chap. 4, p. 27. 3 Rutherforth, p. 549, Bas *v.* Tingy, 4 Wheaton Rep. p. 40. Miller *v.* The Resolution, 2 Dallas, R. 21.

9. That, under the law of nations, members of one belligerent nation may lawfully kill members of the other belligerent nation, or seize or capture their property wherever found, except in neutral territory. Lawrence's Wheaton, p. 518. 2 Rutherforth § 18, p. 578, § 19, p. 594. 3 Phillimore, p. 137. Burlamaqui, p. 195, 201. Jecker *v.* Montgomery, 18 Howard, 114.

10. That the commission of an officer in the army of a belligerent power, authorizes him and the men under his command to engage in every act of hostility against the other belligerent, permissible under the law of nations.—1 Kent's Com., pp. 94 & 96. Halleck, p. 386. Lawrence's Wheaton, pp. 626, 627. Lieber's Instructions, No. 57. 1 Opin. of Attys. Gen. pp. 46, 81. 26 Wendell, p. 675. 2 Rutherforth, pp. 570, 580.

11. That if such commissioned officer violates instructions, limiting him and his command to certain acts of hostility, and exceeds the bounds therein prescribed for him, he is guilty of an offence against his own government, whose rules for his guidance he has infringed; but he cannot be regarded as a criminal by the other belligerent, or by neutral nations; for he is innocent of any offence against international law.—3 Phillimore p. 137. Bynkershoek, p. 134. 2 Rutherforth, pp. 596, 597, 598, 599. Wheaton, pp. 247, 248, 249.

12. That the only government having power to enquire whether such commissioned officer has exceeded his instructions, or violated the rules laid down for his guidance in his conduct towards the enemy, is the government which commissioned him.—Bynkershoek, p. 134. 2 Rutherforth, pp. 595, 6, 7, 8 & 9. Wheaton, 247, 8 & 9. 1 Opinions of Attys. Gen., pp. 46, 81. Westlake's Priv. Int. Law, p. 120. 26 Wendell, p. 675.

13. That a violation of neutral rights, either by capture in neu-

tral territory of enemy's property, or by the use of neutral territory for the passage of troops or as the starting point of an expedition against the enemy's country, does not deprive the troops so violating neutrality of their belligerent character. The belligerent whose property has been captured has no rights in the matter, and *quoad* him, captures so effected are legal. Such violation of neutrality cannot affect in any way the non-responsibility of belligerent troops to the ordinary tribunals, for hostile acts.—Historicus, p. 52, 153, 154, 155, 158, 159, 162. 1 Kent. p. 119. Grotius lib. III., cap. 4, §8. Bynkershoek b. 1. cap. 8. 2. Ortolan, p. 256. The Anne, 3 Wheat. Rep. 435 per Story C. J. The Etrusco. 3. Rob. 162. Brig Alerta vs. Blas Mornet. 3. Peters Rep. 425. La Amistad de Rues, 5 Wheat. Rep. 389, per Story. Wheaton, p. 722. Judge Tallmadge on McLeod case, 26 Wendell, pp. 663 to 699.

14. That a neutral government cannot take cognizance of, or pronounce a judgment upon, any act of hostility committed by troops under the command of an officer commissioned by one belligerent, within the territory of the other belligerent.—Lawrence's Wheaton, pp. 40, 42 *in notis*. Bynkershoek, pp. 115, 116, *in notis* 119, *in notis*, Notis. 26 Wendell, p. 688 & 9. Vattél, 3, lib. 7, cap. § 103, 110. Halleck, p. 73. 3 Phillimore, 201, 202. 2 Burlamaqui, pp. 193, 203. Lee on Captures, pp. 109, 138. 2 Rutherforth, 550, 551, 552, 553. 2 Azuni, p. 64.

15. That if a neutral nation, on the demand of one belligerent, delivers up to that belligerent soldiers and officers of the other belligerent, who have committed acts of hostility in the country of the belligerent demanding such extradition, on the ground that such acts were crimes, such pretended neutral nation thereby violates its neutrality and espouses the side of the belligerent to whom extradition is made.—2 Burlamaqui, p. 193. 2 Rutherforth, pp. 552, 553. Halleck, p. 629. Bynkershoek, pp. 69, 118 *in notis*.

16. That as a civil war existed between the Federal States and the Confederates States on the 19th October last; Her Majesty had proclaimed Her neutrality in the war; and Bennett H. Young was then a commissioned officer in command of a detachment of Confederate troops, operating under orders from his Government within the territory of the Federal States, the act of Bennett H. Young and his command cannot be measured by the provisions of the municipal criminal code of the enemies of his country; nor can our Courts or officials hold his acts to be crimes within the purvieu of the Ashburton treaty.—U. S. *v.* Palmer. 4 Wheaton, p. 52.

17. That the assemblage of Citizens of the United States, for the purpose, on behalf of the Confederate States, of sacking and

burning the town of St. Albans is an overt act of treason against the United States.—Ex parte Bollman et al. Marshall on the Constitution, p. 42, 44. U. S. *v.* Burr. do. pp. 61, 62, 63, 65, 66, 69, 70, 73, 81, 82.

Mr. Kerr said :—To me has been confided by my learned friends the duty of opening the case for the prisoners. It is, I can assure your Honor, with fear and trembling that I take upon myself the responsibility necessarily attaching itself to my position. Not that I believe that our cause is weak, not that I am afraid that our just claims will be ignored; but the great importance of the principles involved, the magnitude of the interests at stake, and the almost boundless field for research and argument which spreads itself before the counsel employed,—all tend more thoroughly to bring before each of us his own utter incapacity to render their meed of justice to the rights of our clients. That this is one of the most important cases ever presented for the consideration of any of our Courts, will not be denied;—that it has already produced a greater effect upon the passions and prejudices of men both in Canada and the former United States, than any other *cause célèbre* in this Province, will readily be admitted. It has been the moving cause of a call to arms within the Colony. It may justly be looked upon as the origin of those fears which culminated in the denial of asylum to political refugees by our Provincial Parliament. From it the careful observer can trace the origin of the pressure brought to bear upon our Judges, to induce them to degrade the palladium of the law into the minister of the temporary passions of the Government, and the servile instrument of the interests of the United States. The very papers produced by the prisoners were bought by the price of blood, for one of the messengers despatched to Richmond to obtain information for your Honor, but the day before yesterday expiated the crimes of being a loyal soldier, a true friend, and a gallant patriot, on the gallows at Johnson's Island. Your Honor can read in the treatment of the messenger, the certain fate of those who sent him on his errand. Cursed be the hand which spareth, is the motto of the United States. Can it be wondered at then that the knowledge of our responsibility in the grave task we have undertaken should weigh so heavily upon us; that it should like a pall hang over us whithersoever we may go. But all that we ask —all that we pray for—is, that it may not so deaden our energies as to render us incapable of laying before you fairly, manfully and faithfully, all the points in this most interesting case, with the principles of law which define the positions of the prosecutors, the prisoners and the judge.

The question of extradition of criminals by the authorities of the country within the limits of which they had sought

refuge, to the authorities of the country within whose territories they had committed a crime, was one which formerly occupied the attention of statesmen and publicists throughout the civilized world. Like every other important principle of what may be called international expediency, the existence of the right to demand was by some authors denied, by others admitted. The question however was shrouded in obscurity, and the greater number of the nations of the world have pronounced against the existence of any such right, by entering into treaties by which they agreed under certain conditions, to deliver up persons to the authorities of the other parties to the treaty, accused of having committed crimes within their jurisdiction. It is unnecessary here to enter into a detail of the treaties entered into between different States wherein an extradition stipulation appeared; it is sufficient to say that Great Britain has, at different periods, entered into two on that subject with the United States. The provisions of the first made, in 1794, and known in American works as the Jay Treaty, was in its extradition clause almost precisely similar to the tenth clause of the Ashburton Treaty; in fact no difference of any moment was apparent, save the promise to vest jurisdiction in the judges and magistrates. It was limited in its operation to twelve years, and expired without any great use having been made of its provisions. The only *cause célèbre* arising under it was that of Nash *alias* Robbins, to which reference will be made hereafter. In 1842, the Ashburton Treaty was entered into between Great Britain and the United States, by the tenth clause of which it was stipulated and agreed, that on demand the high contracting parties should deliver up to justice, all persons who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, &c., &c., should seek an asylum, or be found within the territories of the other, provided that this should only be done upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and committal for trial, if the crime or offence had been there committed; and it was further provided, that the evidence of criminality should be heard and considered by the judge or magistrate issuing the warrant, and that if on such hearing, the evidence should be deemed sufficient to sustain the charge, then the justice was so to certify to the proper executive authority, in order that a warrant of extradition might issue.

It has been ruled in this case that the proceedings were rightly instituted under the Provincial Act 24 Vic., cap. 6; it becomes then my duty to enquire what are the powers of the officials mentioned in that Act, with reference to the examination of the sufficiency of

the evidence to sustain the charge. In order so to do, it becomes necessary to examine the powers and duties of our Justices of the Peace out of sessions, in their examinations into charges of indictable offences against persons brought before them. By the 30th clause of 102 cap. Con. Stat. of Canada, it is provided that in all such cases the justice or justices shall, in the presence of the accused person, take the statement on oath or affirmation of those who know the facts and circumstances of the case. By the fifty-seventh article it is provided, that if in the opinion of the justice the evidence is sufficient to put the party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such justice or justices to commit him for trial without bail, then such justice shall admit the party to bail; the deduction, therefore, from the evidence the justice has received from those who know the facts and circumstances of the case, in order to justify his committal for trial, must be one raising a strong presumption of guilt against the accused. Can it be pretended that the justice having three alternatives to choose from, all founded on the comparative strength of the evidence against the prisoner, viz., either to discharge him absolutely, to bind him over, or to commit him for trial, that that discretion does not in fact give him power to examine and weigh the evidence, in order to discover to which course the character of that evidence forces him? If from the nature of the evidence adduced, which in itself is incontrovertible, it is apparent that to commit him, or even to bind him over, would expose the country solely to the costs of a trial, which must result in the acquittal of the prisoner, the duty of the justice is clearly to discharge. If, on the other hand, no evidence has been rendered changing a *primâ facie* case of felony, it is the duty of the justice to commit. Can it be pretended that a man who has acted as public executioner at the execution of a criminal condemned by a competent court to death, would not, were he apprehended for murder, be allowed before the magistrate holding the preliminary examination, to produce the record of conviction and the *document proving* his own status as executioner; and would it be pretended that the magistrate had no right to examine into such evidence, and that it was his duty to commit for trial for murder because it was proved by the prosecution that a man had been hanged by the prisoner? Numberless other cases may be cited in which the doctrine advocated by the prosecution is shown in all its true absurdity. This, let it be remembered, applies solely to cases arising under our municipal law, where the injustice is suffered by one of our fellow-subjects, and where his committal for trial, even for an offence of which he is not guilty, can only, at the most, entail upon him the temporary inconvenience of imprisonment in one of our gaols;

but when the extradition to a foreign power of a man who has committed no crime against our law, but who seeks solely in a British colony an asylum from the enemies of his country, and who trusts himself to the national honor of Great Britain for protection, is demanded, it becomes us to be exceedingly careful, lest in our anxiety to concilitate powerful neighbors, we are not induced, in the eloquent words of Lord Palmerston, to violate the laws of hospitality, the dictates of humanity, and the general feelings of mankind. Let us beware lest we should be hereafter universally and deservedly stigmatised as dishonored, by our hasty conduct in this case. The necessity then for a careful and searching examination of the evidence in an extradition case is apparent; all the facts and circumstances are to be looked at with the greatest care, in order that the magistrate may be fully satisfied that the prisoner really has committed the offence of which he is accused; he must beware lest in a case of manslaughter he commit for murder; he must take care that the offence is not larceny whilst he commits for robbery; but above all he must be satisfied that the man is guilty of the crime with which he is charged. In the examination of this case, if we can quote authorities from American authors, and cite precedents from American reports, the United States government surely will not complain of our drawing from their arsenals weapons wherewith to combat their pretensions. The judgments of their Supreme Court are acknowledged in England as of the very highest authority, are cited at the bar as of the very greatest weight, and are listened to by the Bench with the greatest respect and attention. The very brightest ornament of that court, he who in his lifetime was acknowledged by all parties as the greatest judge who ever adorned the bench in the United States, and who was pronounced by Mr. Justice Story, in an address to the bar, to be the expounder of the constitution of that republic, was the late Chief Justice Marshall. His intellect was so essentially judicial that every dictum of his is precious; his intuitive perception of law was so marvellous as to enable him to discover the most recondite principles at a glance. When then we have on record his deliberate opinion on any point, we may almost defy the most wily sophist to shake our confidence in the strength of the position taken. One of the most masterly efforts of that distinguished man was made in the argument before Congress, when the question of the extradition of a man named Nash, alias Robbins, came up for consideration. It would appear that Nash was one of the crew of H. M. S. Hermione, which was taken possession of by mutineers, who, after killing some of the officers, carried the vessel into a Spanish port. Years after, a demand for the extradition of Robbins, under the treaty of 1794, was made on the American, by the British Government, on a

charge of murdering one of the officers of that vessel on the occasion in question. Nash was extradited, notwithstanding he set up in his defence, and endeavored to prove, that he was an American seaman who had been impressed on board the Hermione, and that it was for the purpose of regaining his liberty that he had joined in the mutiny. Great excitement raged in the United States, the case was brought before Congress, and it was in defence of his friend and patron, George Washington, that the late Chief Justice, then Mr. Marshall, delivered a speech on the subject, which for a time silenced all opposition. Amongst the positions taken by him, was the following: "That had it been proved that Robbins was an American—had been impressed on board the Hermione, and had been guilty of homicide in endeavoring to regain his liberty, such homicide would not have amounted to murder, and he could not have been extradited,"—thereby clearly showing that in his opinion the forcible impressment, if proved, should have been taken into consideration, and that the person who rendered the decision was bound to weigh all the evidence, even of justification, and to give effect to all the circumstances surrounding the act, by which the enormity of the crime might have been diminished or mitigated. The next case in which any point of importance was decided is that of Christiana Cochran, who on the demand of the British Government, was extradited in the year 1843, on a charge of murder. There the counsel for the accused interposed, as an objection, to any further proceeding before the commissioner, a plea of insanity, which, in the words of the (4th Atty.-Gen's. opns., p. 202) Atty-General's opinion, was, after a full and impartial investigation, overruled. This, then, is a corroboration of the opinion expressed by Chief Justice Marshall. The next case from which we can obtain light is that of the Gerrity. The schooner J. L. Gerrity was an American vessel, owned in the Northern States. Previous to her departure from Matamoras, a neutral port, for New York, a number of men, amongst whom were the prisoners Tirnan & al., engaged passages to the latter port. Two days after the vessel sailed, the passengers rose in arms, declared to the captain that "you are now to consider yourself a Confederate prisoner," took possession of the vessel and its contents, and sent the captain and crew adrift in one of the boats. They were apprehended at Liverpool on a charge of piracy on the high seas, and their extradition was demanded under the Ashburton Treaty. For them it was contended, 1st.—That piracy on the high seas was not an extraditable offence; 2nd—That they were acting on behalf of the Confederate Government, which was then at war with the United States, and a recognised belligerent. It must be remembered that the only proof of their belligerent capacity was the admission made by

the captain of the Joseph Gerrity, of the declaration to him by one of the passengers that he was to consider himself a Confederate prisoner. No commissions, no instructions, from that belligerent government were produced, nor was it proved, that they were natives or subjects of the Confederate States; in fact the presumption was that they were British subjects. And yet the Chief Justice, who, it must be remarked, differed from the majority of the Court with respect to the first point, on which they were discharged, observed with reference to the second, that "I concur that persons although not subjects of a belligerent, and although violating the laws of their own country by their interference in its behalf, are not therefore chargeable with piracy. But, at the same time, they cannot protect themselves from the consequences of piratical acts by assuming the character of belligerents. The prisoners averred that they were acting on behalf of the Confederate Government, and Mr. James is right in arguing that this is the same as though they had hoisted the Confederate flag; but we also know that the flag of a country is frequently hoisted by pirates for the better carrying out of their schemes, and *we must look at all the circumstances to see whether or no the object of the prisoners was a piratical one.* I cannot say that, that was so clearly negatived as to oust the justice of jurisdiction to commit the prisoners." We have here, the opinion of the Chief Justice of England, saying that the judges on *habeas corpus* are bound to look at all the circumstances in order to come to a proper judgment on the nature of the act. He, moreover, admits that the declaration of the prisoners that they were acting on behalf of the Confederate Government, negatives, to a certain extent, the presumption that they were pirates; but he cannot say that that declaration without proof of commission or instructions from the Confederate Government, so clearly negatived the presumption of piracy as to oust the justice of his jurisdiction to commit; but his opinion maintains most strongly the principle that a *prima facie* case against a party may be so destroyed by evidence of belligerency as to oust the justice of his jurisdiction, thereby giving to the justice the judicial power of appreciating and weighing the testimony. Mr. Justice Blackburn in the same case makes use of the following remarks "there was evidence of piracy *jure gentium* and also evidence that the act was a belligerent one in furtherance of the cause of the Confederates, who are belligerents and so recognized. The act then, so far as the evidence goes, was either piracy *jure gentiun*, in which case we are not empowered to give them up, or it was the act of belligerents, and therefore triable neither here nor elsewhere." It must be admitted that there really was very strong evidence of piracy, and very weak evidence of belligerency in the case in ques-

tion, the only fact to show the latter character being furnished by the declaration of the prisoners, which the Chief Justice likened to the hoisting of a flag. In the case of a vessel attacking and capturing a French merchantman, such vessel would not be relieved from the imputation and consequences of being a pirate by showing that at the commencement of the attack she hoisted a Mexican flag, if she did not produce either her commission as a man-of-war in the Mexican navy, or letters of marque authorizing her to cruise as a privateer. Mr. Justice Blackburn very justly remarks also, that if it were the acts of belligerents, it was triable neither in England nor elsewhere, thereby showing conclusively that in his opinion, proof of the belligerency before the magistrate took the case out of the treaty. The next case demanding our attention is that of the Roanoke, which was taken possession of on the high seas, by a party of Confederates under the command of an officer, who had taken passage in her from a neutral port. They were arrested at one of the West India Islands on a charge of piracy. At the preliminary examination before the magistrate, after evidence of the act of pretended piracy had been gone into, the officer in command produced his commission and instructions, and thereupon the Attorney-General for Her Majesty abandoned the prosecution and they were discharged. In the natural order of things we now come to the case which without doubt is the *cheval de bataille* of my friends on the other side, the one containing according to their ideas the concentrated principles of law applicable to the facts of the St. Albans raid, and one so perfectly analogous that it absolutely puts an end to all our pretensions. I mean the Burley case. The opinions pronounced by the Upper Canadian Chief Justices and Judges have been submitted to the decision of the civilized world, and have become a portion of the property of the nations of the earth. Those opinions, therefore, are now open to critical examination, and any one wishing to satisfy himself upon the responsibility incurred by belligerents in visiting neutral countries, would be forced into investigating the correctness of the principles therein laid down as regulating the course to be adopted in all cases, wherein extradition should be demanded. The questions naturally arising in that case were of vast importance, affecting not only the prisoner, but in their consequences touching the question of peace or war between Great Britain and the United States. The law of the Province of Canada was not the only system of jurisprudence involved, but the International law of the globe presented itself for discussion. The rights of belligerents, the duties of neutrals, the sovereign powers of governments and the individual safety of subjects presented themselves in turn for consideration and settlement. For the nonce then the judiciary of Upper Canada lost their character of Colonial judges and occupied

the distinguished position of expounders of the principles of International Law. Their position in the face of the world was the same as that adorned by the late Lord Stowell in England and Chief Justice Marshall and Judge Story in America. To those eminent jurists is society indebted in a great degree for the maintenance of those principles of International Law, which regulate the intercourse of nations in peace and in war ; and to them is due the credit of having dissipated the many erroneous theories advanced by publicists as forming part of the law of nations. To them also is due the praise of having in every instance which came within their ken upon the Bench, administered justice without fear, favor or affection, to all who appeared before them as suitors. It behoves us then to inquire whether the recent judgment on the application for Habeas Corpus in Burley's case is based upon the principles of law applicable thereto, or whether either through ignorance or a base subservience to popular opinion or to Governmental pressure, the judges of of Upper Canada have shown themselves unworthy of the position they occupy. Let us then on this occasion examine with due care the principles which by those judges are declared as governing their decision ; and discover whether the conclusion arrived at is one justified by the facts proved, and whether the principles invoked by the Bench were rightly or erroneously applied. The first proposition made in the order is that the question of the act being a belligerent act is one solely for the consideration of a jury in the United States. The second is that an officer in the navy duly commissioned in the service of one belligerent, is not authorized thereby to wage all acts of hostility on the lakes or sea against the property and persons of subjects of the other belligerent. The third is that where the officer in command of an expedition deviates, in his discretion from the line of conduct laid down for his guidance in his instruction, the subordinate officers and men under his command by obeying orders so to deviate, thereby lose their character of belligerents, and are responsible criminally for any acts they may commit which in time of peace would constitute crimes. The fourth is that a violation of Canadian neutrality aggravates crime committed in the jurisdiction of the United States. The fifth is that a judge, in a neutral country, has a right to inquire into any deviation by the officer of a belligerent power duly commissioned in war, from the purport of his commission, on the demand of the other belligerent, and can thereupon declare that in so deviating he committed an offence against the laws of the other belligerent, and order him to be confined, preparatory to extradition to his enemy. The sixth is, that such proceedings by the judge are not in violation of Her Majesty's proclamation of neutrality. It might perhaps be as well here to refer to some of those *causes célèbres* which have rendered the

Upper Canadian Bench and Bar so famous throughout the world, Heaven knows that we poor Lower Canadians have no pretension to cope with them in any field of either industry or talent. We are, with all due self-abasement be it spoken, an inferior race fitted by nature for the barren, bleak, miserable country we inhabit. Content to live and die as our fathers did before us, we exist without any of that noble fire wich occasionally leads men to do deeds reflecting honor on their native land. We plod on in the weary round of politics and law most congenial to our temperaments; we cling to the *Coutume de Paris*; we reverence Blackstone; we dislike novelty, and we abhor new fangled ideas of jurisprudence. We have been ridiculed and laughed at for our stolidity. We have been abused for our ignorance. We have been told that the Bench of Upper Canada is composed of men renowned, alike for their talent, learning and integrity. We have been assured that celebrated men cluster at the bar of that portion of the Province, thick as grapes in a vinery. We have been advised to listen to the words, pregnant with research, and learning, uttered by the ministers of justice in that favored portion of God's earth.—We have been recommended, in lieu of studyiny the speeches of Erskine, Curran, Burke, or Plunkett, to open our ears to the ravishing melody of the utterances of Upper Canadian counsel, and from the models of eloquence and style by them set before us, to form our ideas of the persuasiveness and powers of Demosthenes and Cicero. We had fondly fancied that had the Upper Canadian Bench but the opportunity, the exceeding talent and learning of its members would have been so displayed before the eyes of the whole world, that scientific men throughout Europe and America would have hailed them as worthy recruits to the select band of international jurists whose writings have shed light on the darkest pages of the law of nations. We in this Lower Province, would have humbly rejoiced at the glory thus reflected on our native land by its distinguished citizens, and the cosmopolitan reputation of Canadians would have kindled a blaze of enthusiasm in our frigid bosoms. But alas, how has the reality deceived us! On two different occasions the Upper Canadian Bench has been tried, and on both found wanting. The case of Anderson, the negro apprehended for slaying a man in Missouri, who endeavored to arrest him whilst making his escape from slavery, was the first which shook our confidence. There the Court of Queen's Bench laid down the monstrous doctrine that they could not take into consideration the other facts depriving his act of the criminal complexion, but were bound by the mere fact of his having killed a man, to commit him for extradition. A trial in a slaveholding country being a necessary consequence, and Anderson's execution being the only conclusion they naturally could expect

from that action. Not content with thus perverting the law as applicable to the negro's act, they arrogated to themselves a jurisdiction to which they had no right, and committed the accused upon their own warrant for extradition. Public opinion in England roused by this frightful injustice, pronounced itself so strongly against the judgment and action of the Upper Canadian Court, that a writ of Habeas Corpus was issued from the Queen's Bench in England, to bring Anderson, and the commitment under which he was then held, to England before a tribunal competent to appreciate and understand the principles of law applicable to the facts. Struck with dismay at the issue of the English writ, the Upper Canadian Judges resolved to burke all such investigations, and from the Court of Common Pleas issued a writ of Habeas Corpus under which the commitment of the Court of Queen's Bench was quashed as having been made without jurisdiction, and Anderson was thereupon discharged. Such were the facts and circumstances of the first case in which Upper Canadian Judges had an opportunity of showing their acquaintance with the principles of International law. It must be admitted that it was a miserable finale to the grand display of learning and argument exhibited by the Court of Queen's Bench, when they declared that it was their duty to commit him for extradition under a warrant which, clearly they had no right to issue, to be obliged to call in their brethren of the Common Pleas to free them from the embarrassing position in which they then were, thanks to their own ignorance; but Upper Canadian credulity is quite equal to Upper Canadian vanity, and the public of that portion of the Province were still more deeply persuaded of the intellectual faculties and learning of their judges, by the exceedingly sharp and skilful manner in which they had managed to elude the action of the English Courts in the matter. But to return to Burley's case, the Upper Canadian Bench taking no heed to the outburst of indignation in England, and in fact throughout the civilized world at their ruling in the Anderson case above referred to, again in this case advanced the doctrine that the judge or magistrate in Extradition cases could not consider any evidence which might be given before him tending to destroy the heinousness of the offence charged. They, in fact, decided that if by any testimony it is proved in any Extradition case where the charge is murder, that a man has been killed, that it is no part of the duty of the judge or magistrate to inquire into any other of the circumstances tending to show either that it is manslaughter or justifiable homicide, those are questions according to their doctrine for the consideration of a jury of the State wherein the act was committed. By a parity of reasoning, if a rebellion were to break out in the State of New York, and men were killed by the rebels,

who should afterwards seek refuge in Canada and be demanded by the United States authorities, our judge or magistrate should commit for Extradition on the gound of murder, having been committed, leaving to the jury of United States citizens, the right of deciding whether the crime really was murder or treason; thereby, in fact declaring that the Extradition treaty has done away with the right of asylum for political refugees in Canada. They have forgotten that this committal for Extradition is, so far as this country is concerned, a final judgment; and surely if we do not wish to be looked upon as the most pusillanimous cowardly race upon the face of the earth, some stand must be made against this departure by judicial authority from the traditional policy of the empire. *Vide* Expte Bollman et al., Marshall on the Constitution (on p. 33 to 41), the People *v.* Martin, et al., 7 N. Y. L. Observer (p. 52 to 56). 4 Opinions Atty.-Gen. p. 202. The other points laid down by the judges will be considered as they present themselves in the order of my argument.

Abandoning for the moment the general principles of Extradition, and the cases cited, I proceed to address myself to the facts of this case. On the 19th of October last the town of St. Albans, in the State of Vermont, one of the so-called United States of America, was thrown into consternation by the appearance of a body of twenty-one armed men whose leader declared that he was a Confederate officer dispatched by his government to take the town. Parties of men were dispatched to different banks where, in each instance, after declaring that they were Confederate troops sent to retaliate for the outrages committed by Sherman and Sheridan, United States officers, in the territories of the Confederate States, they forced the officers of those banks to deliver up to them divers valuable securities of the United States, worth about half their nominal value, and all the bank notes in the institutions at the time. I wish to draw your Honor's attention at this stage, to the fact that bank notes and securities for the payment of money are, under the declaration of the Government of the United States, contraband of war, and liable to be taken from a neutral vessel under the same circumstances as would justify the forfeiture of munitions of war. Whilst in the bank these scenes were going on, another party had been detached to secure horses and equipments for the raiders. A sufficient number was procured to mount them all. In the interval a number of United States citizens had been taken prisoners, and were conveyed to and kept under guard in a public square. During the time a party of the raiders were in possession of the St. Albans bank, a person of the name of Breck entered to pay a note. He was informed that he was a prisoner to the Confederate troops, and the money which he

had brought with him was taken from him by one of the two raiders then in the bank. A skirmish then ensued between the raiders mounted, and the townspeople who had armed themselves. An attempt to fire the town was frustrated, and the raiders being formed in military array retired from the town pursued by some of the citizens, who fired upon them in their retreat. A pursuit was organized, but the whole party of Confederates succeeded in crossing the line to Canada, where, without warrants or sworn informations having been laid, thirteen of them were arrested by the country magistrates and constables. So soon as the news reached Montreal and Quebec, Judge Coursol was despatched to the frontier to conduct the proceedings, and was ordered, by the Attorney General, to arrest the offenders without waiting to make out informations or to draw warrants. It is unnecessary for me here to give any further details of the proceedings had before Mr. Justice Coursol, for they are now matter of history. The facts of the raid as given above are in evidence before your Honor. The commission of Bennett H. Young in the Confederate army, and his instructions to form a corps of twenty Confederate soldiers, escaped prisoners of war; his instructions to report for orders to Messrs. Thompson and Clay, and his instructions to report to Mr. Clay alone for orders, are fully and satisfactorily proved in this case. The actual order, to make the raid, signed by Mr. Clay, has been produced and proved; and the muster rolls of the different companies, to which the prisoners belong, in the Confederate service are also before the Court, authenticated by the proper authorities. From these papers no other deduction can be drawn than that on the 19th of October last Bennett H. Young was an officer in the service of the Confederate States, in command of a party of Confederate troops, detailed for special service by that Confederate Government to St. Albans, in the State of Vermont, with which the Confederate States were then at war, the State of Vermont then being one of the United States—which war by Her Majesty had previously been acknowledged as a perfect war, and by Her also Her subjects had been warned to maintain and keep a strict neutrality between the parties contending. It is necessary here to refer to a point in this case of vast importance, with reference to the very existence of the treaty, under the provisions of which the extradition of the prisoners is demanded. Since the date of the treaty, five or six States have been admitted into the Republic, at that time composed of a number of sovereign States recognized by the world as a government under the name of the United States. Since that date, nine or ten of the States forming a portion of that Republic at that time have seceded therefrom and erected themselves into a separate republic, under the name of the Confederate

States. Can it be pretended that Great Britain has the same rights, against the United States, which can be granted to her now, as at the date of the passing of the treaty. If a man commits a crime in Canada and takes refuge in Richmond, can the Government of the United States extradite him on the demand of the British Government. If, on the contrary, a man commits a crime in Texas, which was only admitted into the Union in 1845, and which was in 1842 an independent State, can he be extradited on demand of the United States Government if he seeks a refuge and be apprehended in Canada? Neither of the two cases was anticipated at the date of the treaty, and it cannot be pretended that the clauses of a convention between two nations are, a whit more elastic than the terms of a contract between individuals. It is also to be remarked that the Constitution of the United States is singular in its formation; the rules applicable to a monarchy do not apply to a republic. Treaties between monarchies or empires are made by the monarchs or emperors; but the United States always made their treaties in the federal capacity of a number of sovereign States constituting the United States. This, then, was nothing more or less than a republic, the sovereignty of which was immediately dissolved by the breaking out of civil war between the several sovereign States of which it was composed; for in a republic the sovereignty subsists solely in the union of the members of the republic. It may be urged that this is a question for the consideration of the Government of Great Britain alone, that it falls within the powers of the Executive, and that judges are bound in these matters to conform to the rules of conduct laid down by the Goverment, and that the United States being still recognized by the Queen, you are bound still to presume the existence of that republic.

To the student the difficulties met with in his search for the true principles of the law of nationsare almost insurmountable. Apart entirely from the impossibility of clearly defining all the principles of that law, if law it really can be called, which does not provide or admit of a judge in the contentions of the parties, who, it is pretended, are bound by its rules—whose principles no machinery exists to enforce, and whose spirit and letter can be infringed by any nation strong enough to set its enemy at defiance; the numerous commentators upon international law have to a very great extent, by their incautious labors, tended to burthen the student with the task of seeking amongst their private opinions of what should be, what really is the law of nations. They have, without due consideration, adopted the usage of two or three of the nations of Europe within the last few years, as legal amendments or modifications of that law on the subject of war, taking it for granted that those nations have a right to

dictate to the rest of the world the proper course of conduct to be pursued by belligerents, forgetting that all nations are equal, and that no nation is bound to submit to the dictation of another. They have also taken conventions contained in treaties as declaratory of existing law, whilst really treaties must be looked upon as means for obtaining the recognition of principles exceptional to the general rule. But few of the writers of this century, if any, have shed any light upon that law, and in order to obtain a faithful insight into its principles, boldly, perhaps coarsely portrayed, we must refer to the publicists of the last two centuries. Of course in so speaking I make no reference whatever to the cases decided in the English Admiralty and in the United States Supreme Court, which are all of the highest authority and are moreover founded on and sustained, by, the writings of the authors, who flourished in the seventeenth and eighteenth centuries.

I have now arrived in this case at that particular point where it becomes necessary to consider the rights of belligerents. Wars of old were divided by the commentators into perfect and imperfect; the perfect war is also called public or solemn, and is where one whole nation is at war with another whole nation; an imperfect war is one limited to places, persons and things. A civil war, when it has attained sufficient magnitude to induce foreign nations to declare their neutrality, is a perfect war. In such perfect war both parties are belligerents, and entitled to all belligerent rights given by war to sovereign governments. It is perfectly clear that so soon as war breaks out between sovereign Governments, the municipal criminal codes of the belligerents are silent and inoperative *quoad* acts committed by the troops of either of the belligerents in the territories of the other. War is a recourse to violence, to repress which municipal criminal codes are instituted. But war is legal. Under the law of nations that law is superior to any municipal code. A perfect war gives the right-to the members of one belligerent nation to kill, spoil and plunder the members of the other belligerent nation wherever found, except in neutral territory. Such being the case the municipal codes having for their object the punishment of parties killing, plundering or committing other violence, are *quoad* members of the other belligerent nation paralyzed by the superior authority of the law of nations during war. *Inter arma silent leges.* All offences committed by members of one belligerent nation upon the members of the other on that others soil,—are within the jurisdiction of military tribunals solely, and are gauged by the laws of war. That this doctrine is recognized in the United States cannot be denied. The President's proclamation of the 24th September, by which the power of the judiciary was abrogated in cases affecting individual liberty and the establish-

ment as matter of fact of martial law throughout the limits of the former United States, as well the loyal as the rebel, shows conclusively the correctness of the position by me taken. If further proof be wanting, take the case of Beal, the leader of the Lake Erie expedition, for participation in which Burley was extradited as a robber, and gather from the proceedings and sentence of the court-martial held on him and its approval by Gen. Dix, whether the Upper Canadian judges were justified in believing that he would have a fair trial before a jury. It has been held by some authors of late years, that only the regularly commissioned officers and enrolled troops of one belligerent are authorized to enter into hostilities against the other belligerent. Without admitting that proposition, still as this case presents the prisoners in those capacities, I am, for the sake of argument, willing to adopt it as the rule. Nations are sovereign. If the Government of one belligerent chooses to despatch a body of its troops into the territory of the other belligerent, with instructions to devastate and lay waste that territory, and those troops do so devastate, plunder and lay waste that territory, and commit any other hostile act therein not mentioned in their instructions, the other belligerent has no right to say to them, if captured, you are but marauders, for you have exceeded your instructions. The mere production of the commission of the officer commanding such force is proof of authority to him, by the Government of his country, to wage all acts of hostility against the subjects of the other belligerent permissible under the law of nations. He then is in the position of a recognized agent of his Goverment, and his acts are not individual, but national, for which his Government alone is responsible. Should he exceed his instructions, he is responsible to his own nation solely and exclusively for such excesses. If he deviate therefrom, so long as he does not commit any act contrary to the general rules of war, he cannot be called to account for it by the other belligerent, or by any nation on the face of the earth. An act of hostility then committed by the officer of a belligerent commissioned in war, on the soil of the other belligerent is an act of the nation by which he is commissioned, for which no individual responsibility is incurred. That this is the case is proved so clearly and decidedly by the joint admissions of the British and American Government in the McLeod case, that the opposite pretension is hardly worth arguing against. During the rebellion in Canada of 1837, the American steamer Caroline was made use of by the rebels and American sympathisers to carry supplies to the rival forces on Navy Island. The vessel usually lay during the night at that Island, and an expedition was organised under the command of Captain Drew, R. N., to cut her out from her moorings; but on its arrival at Navy Island, it was discovered

that the Caroline had been removed to the American side of the river, and was then lying at a place called Schlosser, in the State of New York; the expedition, however, proceeded, attacked the boat, carried her by boarding, and in the skirmish a man of the name of Durfee was killed on the soil of the State of New York. The Caroline was then towed out into the rapids, set on fire, and sent over the Niagara Falls. A person of the name of McLeod visiting in 1840, Manchester, in the State of New York, was arrested for murder on the charge of being one of the party concerned in the cutting out of the Caroline and killing of Durfee. I was at Manchester at the time, and remember perfectly that the only person who exclaimed against the arrest was a gentleman from the Southern States. In the diplomatic correspondence which ensued, it was clearly admitted by both the American and British Governments, that troops acting under orders, and even killing the citizens of a nation at peace with their own on that nation's soil were not guilty of murder, although the commander had actually exceeded his instructions, which did not authorise his exercising any act of hostility on the neighboring nation's territory. Is not this a much stronger case than that of the St. Albans raiders, to prove the virtue resident in a commission of an officer of the British Navy? The acts committed by Young and his command were done in an enemy's country; those by Drew and his command in the country of a friend; yet in the latter case the Governments of both countries declare that the acts are not crimes; whilst in the former it is pretended that they are. There is also in existence in the United States an act of Congress giving legislative expression to the doctrine of the new responsibility of a commissioned officer, passed on the 8th August, 1842. A great deal, no doubt, will be said as to the fact that the raiders were not in the uniform of the Confederate army; but stratagem and deception, so long as no perfidy is used, are quite permissible; the ambush, the disguise of uniform, the false flag, are allowable. Those who trust themselves to such devices may in the two latter cases be treated as spies, if captured in the attempt to deceive, or ere their departure from the enemy's country; but once beyond the boundaries, the enemy is not justified by the laws of war, if afterwards taken prisoners (3 Phillimore, p, 141), in treating them otherwise than as prisoners of war. No other power then, having the right to enquire into the fact whether or no such commissioned officer has exceeded his instructions, the Government which commissioned him is the only one entitled to find fault with or punish him for any excess or dereliction of duty.

The duty of neutrals now, for a brief space of time, must occupy my attention; but this branch of the law of nations, so far as this case

is concerned, is one which presents no difficulty. The authors are quite unanimous, it may be said, as to the neutral having no right whatsoever either to interfere in any way in the war, or to express an opinion upon any of the acts of the belligerents. It is to be remembered, that the action of our courts of justice in this matter must follow the action of the Government of Great Britain. That Government has declared its neutrality in the war between the United States and the Confederate States—thereby informing all our courts, judges and magistrates that the municipal criminal codes of those two Governments are silent and inoperative, so far as municipal crimes committed by the citizens of the Confederate States on United States soil are concerned, and that the law of nations alone is in force between the two Governments and their respective troops and subjects. Thus our courts and judges, in cases where charges are brought against any persons by the United States Government, of having committed crimes within the limits of the so-called loyal States, should in the first place inquire whether the person so charged is a Confederate officer or soldier; if he be such officer or soldier, the criminal code and common law of the State, within which the act charged was committed, are not binding upon him; the extradition treaty does not apply; he must be discharged. Can it be pretended that you, Sir, have any right to dictate to the Confederate States, the rules of war which they are bound to observe? that you, a municipal judge, can step forth and say to the rising tide of the fierce passions and fiery hate engendered by this frightful war, "so far shalt thou come, but no further?" Or do you think that you would be discharging your duty to your Queen and country, by acting the part of Provost Marshal to the United States in capturing prisoners of war to swell the numbers now confined at Camp Douglass and Johnson's Island? If in this case you take upon yourself the responsibility of committing these men for extradition, you will violate the Queen's proclamation of neutrality, and will place yourself on a par with the bench of Upper Canada. The pretended violation of our neutrality laws has really nothing to do with this case. Had they marched through with drums beating and colors flying, it would have been a grave offence against our Government; but it cannot aggravate, in the slightest degree, the acts of hostility afterwards performed in Vermont. (The learned counsel here cited from Historicus, pp. 152 to 162, in maintenance of his position, apologising to the judge in the words of Historicus, for breaking a butterfly on the wheel.) The learned counsel on the other side have, in accordance with their instructions no doubt, persisted in calling the prisoners robbers and murderers. They appear to have imbibed the prejudices of their client, the United States Government, and to be unwilling to

admit that our clients have any claim to be belligerents. The people of the State of Vermont are, it is said, frightfully excited at the idea of one of their towns having been captured and held for three hours by a band of twenty-one pretended Confederate soldiers. The booty taken from the banks, no doubt, has also tended to exacerbate their feelings, and they still continue to brand the St. Albans raid as unsoldierly, dastardly, in violation of the rules of war, and perfectly fiendish. They all seem to take it for granted, that the Government of the United States wages war after the mildest fashion, on the idea of doing the least possible harm to the enemy. No pillage, say they, is permitted; women sleep tranquilly in the rebel States, within the sound of the bugles of our regiments; children are cared for by our soldiers with paternal love; property of every description may be before our troops for days without an article disappearing; our men are models of bravery, honesty, and morality; our generals are gentlemen, and Christians. And yet what does the record of daily events show us? That this verily is a civil war waged by the North against the South, with all the barbarity of the thirty years war, must strike every observer. It is the old feud of the Cavalier and Roundhead rising like a phœnix from its ashes, and bathing the soil of this continent in gore. It is a strife wherein the father meets his son at the point of the bayonet, and where the brother imbrues his hands in his brother's blood. It is a carnival of blood; and can it be wondered at that man, drunk with the odor of carnage, should forget that he was framed after his Creator's image, and do deeds which bring him to the level of the wild beasts? It may be as well here to refer to a couple of instances to show the humanity and Christian feeling of the commanders of the Northern armies. Sala, in one of his letters, gives on the testimony of an eyewitness, relation of the following facts: a boy of fifteen or sixteen years of age was convicted of having in his mother's house a rifle, and was sentenced to die; his mother and sister fell on their knees before the General commanding, begged that the boy might be spared, the poor child in the meanwhile ignorant of his impending fate, patting the neck of the general's charger. His only reply to their agonized entreaties was, that they might have his body, and giving a sign, the unfortunate boy was marched five or six paces to the rear, when the orderly, placing a revolver to the victim's head, blew his brains out, in presence of his mother and sister. The other case to which I refer is that of a lady who perchance may be amongst those, who now hear her melancholy story. Her husband, a major general in the Confederate service, having been killed on the field of battle, she desired to go to England, his native land. The President of the Confederate States, waited upon, and for the republic, bought from her, all the cotton then on her planta-

tion, paying her therefor $15,000 in cotton bonds. With those bonds in her possession and $25 in gold in her pocket, she reached New Orleans. There she was arrested, her money and bonds taken from her, and in a strange country she was turned out into the streets to starve. So much for the humanity of the North to Southern women and children. Let us boast of man's moral improvement as much as we may—let us flatter ourselves that we are now Christians —let us blame the fierceness in war of our ancestors but let the mailed hand of civil war but touch the gossamer toga of civilization, and it will fall from the shoulders of the man of the nineteenth century, revealing him in all the nakedness and barbarism of the dark ages of the world. It is a sad and melancholy prospect for any man of the Anglo-Saxon race to behold that fair Republic which, though but an infant in years, was a giant in stature, and which but a few short months ago was the home of freedom and the asylum for the persecuted races of Europe, now the theatre in which the most absolute despotism is exercised, where liberty is no longer known save in tradition, and where those who seek an asylum from the persecution of the task-masters of Europe, are driven, like cattle to the shambles by the speculators in human blood of the New World. It is impossible I say, for any man with British blood in his veins not to admire the heroic valour and determination which have caused the Confederates so often to triumph over what were thought to be insuperable difficulties. Though their cause may now look desperate, that valor which has enabled them ere this to knock at the door of the Capitol will, I verily believe, inflame them to repeat the attempt sucessfully ere this war be concluded. Such I believe to be the sentiment of every Englishman in whom the disgusting love of trade has not destroyed the traditions of his mother country, and his own inborn love of fair play and hatred of tyranny.

I must now apologize to you, Sir, for the great length of time that I have taken in laying before you my views of this case. I have referred to the responsibility of the counsel engaged; I may now perhaps be permitted to remark upon the weight of responsibility assumed by you, to which ours is but as a feather. You have, Sir, in this case an opportunity of immortalising yourself as a jurist: this is not an ordinary suit coming before a muncipal tribunal, which by all persons save the plaintiff and defendant will be forgotten in a week; it is one which in after years will reflect credit on you throughout the civilized world, if you render a sound judgment. If on the contrary through carelessness or from any other motive, your decision is unsound, you bequeath to your children an unenviable name.

In conclusion, I trust that your Honor will ascribe the imperfection of my argument, not to the weakness of the prisoners' case, but to my inability to do justice to their claims.

Mr. Laflamme, Q.C., said :—

If it were possible to divest this case of all interest, prejudice, and passion,—if the naked propositions of law and fact, upon which it rests, were alone submitted for decision, the task would be easy. If the demand were made by some small republic of South America for the extradition of five commissioned soldiers, engaged in a civil war there,—admitting that they had violated all the laws of hospitality and neutrality of a neighboring country,—no argument would be required. Unfortunately for the prisoners, their deeds have created a deep and general sensation. The feelings of their enemies—our too powerful neighbour—have been aroused: violent language was used towards Canada, whom they held responsible for this injury. Our community felt that war was impending; every individual already contemplated his ruin in the ruin and desolation of the country. The guilty or innocent causes of such anticipated disasters could not expect much sympathy or favor from those upon whom they were to precipitate such calamities. Every one believed that the only manner of averting these calamities, was by soothing, at any price, the anger of our neighbors, who were loudly claiming the surrender of the prisoners. Fear left no freedom to the application of any rules of law or justice. The prisoners were styled common robbers, their act an outrage against humanity. Ready-made doctors of international law laid down the doctrine with all the dogmatic assurance of ignorance. It is, moreover, in human nature to shape principles according to necessity, and to assent to any doctrine favoring its interest. The Government, from the highest to the lowest official, and their servile instruments, were most active in disseminating these ideas. From this so contrived and made up opinion, a universal notion seemed to pervade the whole community, that the case of the prisoners was a difficult, a hopeless one. Those on whom they had to rely for support were few and powerless. Their Government was distant and weak; whilst their enemies were almost amongst us—over us, dictating with undisputed authority, and obeyed with crouching docility. It is against these difficulties that we have to contend, more than against any real legal obstacle. The question submitted involves a question of British liberty. To its decision is attached the lives of five men; and the main issue is between two nations,—one asking that these men shall be declared robbers and murderers, to be treated by them as such; the other asserting that they are brave and dutiful soldiers, having inflicted upon an enemy none but a well devised and well executed injury. It is with a sense of shame that one thinks, in a matter involving principles which a British subject ought to hold most sacred, that fear might oppress justice. The rendition of the prisoners, owing to such a motive, would be a

shock even to the intelligence and sense of justice of the nation claiming them. They are a great, a powerful, but above all, a most intelligent nation. None have more strongly and ably advocated, or more liberally construed the great principles of individual liberty, the freedom of the soil, the inviolability of the asylum offered by them to every individual, excepting only those who have committed crimes against the laws of nature. They do not, and can not expect any deviation from the rules which they have so clearly laid down. The refusal of this application, if justified by sound principles of international law, will be approved of and admired by them; whilst any hesitation would imply a suspicion of their sense of justice, and betray a timidity on our part, to call it by no other name, which would breed contempt and invite them to urge the most extravagant pretensions.

The prisoners are accused of having robbed one Breck, in St. Albans, on the 19th of October last, of $300. What are the facts of the case, as disclosed by the evidence adduced before your Honor? In the month of September last, Bennett H. Young, a lieutenant in the Confedetate service, being in Chicago for some political object, calculated to advance the cause of his country; finding it impossible to carry out this plan, determined to fulfil the instructions which he received from his Government, to raise a body of twenty men of escaped Confederate soldiers. He was commissioned for special duty; they, as soldiers, were bound to join and obey. The plan was organized, then, in the enemy's territory. They were enrolled by him for the purpose of making an attack upon, and sacking the town of St. Albans. All of these men were risking their lives by their presence in the enemy's country. The bare fact of organizing there was, of itself alone, a bold and daring act. Their allegiance was to the Confederate States. Be the unfortunate contest, in which their country is engaged, right or wrong, they were actuated by the most noble, the most disinterested and patriotic motives: every one of them had already perilled their lives in their country's cause. Feeling, as they did, for the injuries committed against their native land, they thirsted for revenge. Called by their superiors to inflict punishment on their enemies, by burning and plundering the town of St. Albans, they cheerfully obeyed; they proceeded to carry out that plan, so far as was in their power. They left Chicago, some four or five coming through Canada, and twenty meeting in the town of St. Albans, inhabited by over five thousand inhabitants, at a distance of eighteen miles from the frontier. In open day-light, they collected together, armed with revolvers, took possession of three banks in the name of the Confederate States, sacked them, set fire to the town in three places,

and from the beginning stated that they were Confederate soldiers. The prisoners went through the town, made prisoners of all they met, provided themselves with horses taken from the people; and after making perhaps double their number of prisoners, they left the place, pursued by an armed band of citizens, who kept close fire upon them. They, however, succeeded in making their escape to Canada, where thirteen of them were arrested, at the request of the United States authorities. Out of the whole of this expedition the prosecution has thought proper to single out the taking of Mr. Breck's money, the smallest incident in the whole transaction; a fact which cannot, with any reason, be abstracted or severed from the main project. It is unnecessary to dwell upon the dreadful civil contest which has now been raging for five years with uninterrupted fury in this once happiest country in the universe. The world has followed the history of this awful struggle with sorrow and dismay. Eleven independent States have asserted their rights as free members of a voluntary association, to sever from this association, which they had formed for their individual interest, reserving to themselves their separate sovereignty. Twelve millions of the people of this democratic nation demand to govern themselves according to their own views, alleging violations of the original compact, aggression, interference, and oppression of their individual States by the others, and for open threats against their rights and liberties. This separation is denied them by the other States, because they are more numerous and powerful,—because more States being combined in one policy, they, the more powerful party, believe that subjugation and coercion is just and lawful, and they insist upon imposing their will, their views, and their ideas upon the eleven independent States. The fifteen States on one side insist on ruling the ten refractory States. The twenty millions of the North claim and insist upon uncompromising obedience from the twelve millions of the South. The whole population of the country is divided in two hostile camps. On both sides we witness that deep, intense, unforgiving, unrelenting hatred which belong to civil wars only; that hatred which succeeds fraternal love. The act imputed to the prisoners arises out of this civil war, and it cannot be the ground of extradition under the statute. 1st, The act is a political one, inspired by, and connected with what is called rebellion by those applying for the extradition of the prisoners; 2nd, The act was one committed by soldiers of a belligerent in the carrying out of war against the enemy; and they are answerable to no municipal tribunal of the enemy: it was a military act, and if irregular, cognizable only by the military tribunal under martial law; 3rd, It is a national offence, if any, and not an individual one.

Every man putting his foot on English ground, every stranger owing only a local and temporary allegiance, becomes as free as the British born subject. Our laws guarantee to every individual the safe hospitality of the soil. It has been England's pride, and England's boast, that no terror could ever induce her to forego this principle, which is as old as any of the great liberties of her constitution. Coke says: "Subjects flying from one kingdom to another, and, upon demand made by them, are not by the laws and liberties of kingdoms to be delivered." This principle will not be denied, and it is unnecessary to dwell upon it. The only exception to it must be found in treaties made for the purpose of obtaining the surrender of criminals. The demand now made for the extradition of the prisoners, is founded upon the Ashburton Treaty. The exception made by the Treaty to the general principle of English law, that no fugitive shall be surrendered, excludes most strictly every offender whose crime does not come within its provisions. The treaty comprises murder, assault with intent to commit murder, piracy, arson, robbery, and forgery. The object of the Treaty is to allow the extradition of criminals who have violated the laws of nature,—offenders against the universal code of humanity,—those who have committed such outrages as attack the very basis of all society, and whose impunity would become a source of danger to mankind. It is the common interest of every community to bring such offenders to justice,—to put them out of the pale of civilization,—to deter others from committing the same offences, by the certainty of having no escape and finding no refuge. Our law and the Treaty does not include, but, on the contrary, positively excludes any political offence, or any crime arising out of a political struggle, or a civil war. Both parties to the Treaty—Great Britain and the United States—have positively limited its dispositions to offences against the municipal code alone, carefully omitting those which could have originated or might have been inspired by political passion, and having for their object a political result. The best interpretation of the Treaty, and one which the party claiming the extradition cannot question, is certainly that given by the executive of the United States themselves when this Treaty was made. We find in President Tyler's message, transmitting this Treaty to the Senate for consideration, the following declaration: "The article on the subject in the proposed Treaty, is carefully confined to such offences as all mankind agree to regard as heinous and destructive to the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences or *criminal charges arising from wars, or intestine commotions.*" Professor Woolsey, of Yale College, in the

United States, writing on this very subject, says: "The case of political refugees has some points peculiar to itself. A nation, as we have seen, has a right to harbor such persons, and will do so, unless weakness or political sympathy lead it to the contrary course; but they may not, consistently with the obligations of friendship between states, be allowed to plot against the person of the sovereign, or against the institutions of their native country. Such acts are crimes for the trial or punishment of which the laws of the land ought to provide; but do not require that the accused be remanded for trial to his native country." It seems most strange that the Executive of the United States, in 1865, should claim the extradition of the prisoners under the Treaty, which their Executive of 1842, who made it, declared to exclude all political offences or criminal charges arising from wars or intestine commotions. In England the doctrine of the inviolability of asylum for political offenders, has been well and forcibly expressed by the most distinguished statesmen and writers. Sir Cornewall Lewis, in his book on foreign jurisdiction, says: "The crimes to which the principle of international extradition properly applies, are those which concern the lives and property of individuals, and which the entire nation has, therefore, a common interest in repressing. If all governments were perfectly equitable and dispassionate, the principle might be safely extended to political offenders; but in the prosecution of political offences, the Government may be considered as an interested party, and, therefore, another government is indisposed to give up persons charged by it with crimes of this complexion. The question seems to involve a contest between the Government and a portion of its subjects; and the extradition assumes the character of interference in the internal political affairs of another state. In cases, therefore, of civil war, of revolution, or of active political proscription leading to the existence of a large body of political exiles, a powerful state, which does not fear the displeasure of the foreign government interested in the question, is impelled by the dictates of humanity to afford them an asylum, and to refuse their extradition when demanded." Lord Palmerston writes: "The laws of hospitality, the dictates of humanity, the general feelings of mankind forbid such surrenders; and any independent Government which of its own free will were to make such a surrender, would be deservedly and universally stigmatized as degraded and dishonored." If the interpretation to be given to the statute be such as to exclude all political offenders, it becomes necessary to determine what may be called a political offence. The shortest and most practical definition is certainly the one contained in President Tyler's message, *i.e.*, a criminal charge arising from war or intestine commotion. We may consider as such any act

done by any individual connected with either of the parties at strife in a social outbreak, a revolution, or civil war, or any act ordered and sanctioned by one of the belligerent parties, even when it involves the destruction of life and property. Whenever the fact complained of is manifestly not a free individual act, inspired by common passions for self-gratification, but originated in the assertion of a right, caused by a feeling of devotion of the individual to the party to which he belongs; or in a compliance with orders of the constituted party authorities acknowledged by him as his legitimate superiors, executed by him under a correct or a false sense of duty or patriotism, then it cannot be a violation of the municipal laws;—it is a political offence.

These exceptions of political offences or military acts, if they have any meaning, must certainly be intended to cover the killing of individuals, the taking or destruction of property in a political struggle, and all such deeds as, independent of such element and unconnected with that object, would otherwise be qualified as murder, attempt to murder, robbery and arson. If the mere fact of killing, of robbing, or of burning, irrespective of the great objects of those acts, were held sufficient to give rise to extradition, then Austria might claim, and justly claim, that Kossuth or Garibaldi should be given up by England. And if the acts now under consideration were not of a kind to be excepted from the operation of the Treaty, there was no utility nor sense in the exception made in favor of political offences. It is manifest that the offences contemplated by the treaty can only be those acknowledged, undisputed and unquestionable violations of municipal laws, admitted as such by all mankind; and not such acts as would be endorsed and applauded by a large portion of the community where they were done. When a deed has been committed by a regularly organized force of one of two parties engaged in a civil war, or even by an irregular unorganized band, those who participate in it, do so with the sole view of assisting their cause. Whilst one party condemns it as a crime, the other justifies it as a just, necessary and praiseworthy act. Foreign governments, or foreign tribunals, cannot qualify it as a crime without passing judgment in favor of one of the parties, and condemning the other. To allow extradition in such a case would be the virtual abandonment of the principle of inviolability of refuge. Mankind agrees, and ought to combine, to force ordinary criminals out of every community, to deprive them of every refuge, to bring them to punishment; but humanity and civilization protest against the delivery to their enemies, to the authorities against whom they have waged war, of parties who, in a social or political strife, have destroyed life or property. Every member of a well organized community is interested in the rendition of a com-

mon criminal; but every man who can appreciate right and liberty is highly interested in jealously resisting the extension of this principle to political offenders. God and conscience may command our resistance against aggression or illegal arbitrary power; we may be crushed in the attempt, we may have to flee for refuge out of our country, and a precedent in such a case as this becomes a rule of international law, and it would be invoked and applied against us. Whenever a party or a nation is interested in obtaining the extradition of individuals who have been engaged in civil war, it is easy to make out a *prima facie* case of murder, attempt to murder, robbery, or arson. No man who has actively participated in a civil war has not killed, or attempted to kill, or destroyed property. The pretension, therefore, to allow none but the evidence of the party claiming the extradition to be adduced, to refuse to the party implicated the right of showing the political connection of the deed, is too absurd to be discussed. The simple enunciation of such a proposition bears its own condemnation. How could a political refugee ever escape extradition, how could he ever invoke the sacred right of asylum? It would be a delusion, a mockery. To carry out the principle, to protect the refugee, it is indispensable that the character of the individual and the facts should be shown, in order to establish that, in the act complained of, the principal element was political. The moment extradition is demanded, the accused has a right to set up and show that he is a political offender, and the judge is bound to allow evidence to substantiate his allegation, which if proved, negatives all criminality and ousts him of all jurisdiction in the matter. I would contend farther that the judge, as representing society, intrusted with the safe-keeping of our liberties is bound to ascertain that the party brought before him is not a political refugee, and the offence not of a political character; and in a case of doubt, he is bound to discharge the prisoner, because if he be a political offender, he is innocent and the judge has no jurisdiction over him, and he would be illegally using his authority as an instrument of oppression and vengeance. In any ordinary case of crime concerning any outrage against the laws of nature, for the punishment of which the Treaty provides, when it is not a political act, the right of extradition is universally admitted. But in this case you have one third of the nation, one of the contracting parties to this Treaty, who raise their voice against the application; a large portion of the community on whose behalf those stipulations were made, and in whose name the extradition of the prisoners is demanded, have constituted themselves a distinct political organization and Government, acknowledged as such by Great Britain, and they demand protection for the prisoners, whom they declare to be innocent of

all crime and entitled to the consideration and respect of the world for the very deed for which they stand now accused. They are engaged in a murderous conflict; every individual in that unfortunate community is engaged in it as one of either party, and stands in deadly enmity to every man of the opposite party, and in this strife the injuries done by an individual of one party to their enemies must be presumed and held to be an injury of the party, unless the contrary appears. Vattel, p. 424—"A civil war breaks the bands of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them, who shall pronounce on which side the right or the wrong? On earth they have no common superior; they stand, therefore, in precisely the same predicament as two nations who engage in a contest, and, being unable to come to an agreement, have recourse to arms." The prisoners are Southerners, Confederates, enemies of the North; they were actively engaged in Chicago about the great object for which their country is suffering, and for which they so heroically contend. They were conspiring against their enemies in their midst, on behalf of their country, at the risk of their lives. After attempting one plan, they decided, under direct and positive orders from their Government, to make an attack upon some open town in the enemy's country, to burn and plunder it. Their leader, Bennett H. Young, had his commission; they were soldiers; they obeyed: the work offered was hostility to their enemies; they undertook it with pleasure. The sole end and motive of their action, was their country's good—the ruin and destruction of their enemies. Can it be doubted for a moment that they were actuated by any other feeling but that which animates the South against the North, that it was the spirit of patriotism or rebellion, as you may choose to call it, which prompted them and carried them on to the execution of this plan? No; the evidence leaves no doubt on this subject. It is unquestionably a part of the great contest carried on between the North and the South, a part, an incident in this bloody drama, and tending to the same result. It is unmistakably a political act. The circumstances, the nature of the deed, the character of the individuals, their organization, their admirable plan and its very result, prove it to be a well devised and well executed political movement. The movement was ordered, the money was furnished by the well known agents of the Confede-

rate Government. The political character of the deed, or its motive, such as established in evidence, disprove all criminality. It is an unquestionable rule of international law that all the citizens of a belligerent State are enemies of all the citizens of the other; and it is also a rule of law, that civil war created, during its existence, that same division which exists between two separate nations. Acts of hostility between the belligerents, acts of aggression against parties in civil war, are not crimes. They are deficient in that necessary element of all crime, the intent to injure any particular individual. There was none of that *animus* which was necessary to the constitution of a criminal offence; because the action in such cases was not directed against the individual, but against the enemy. In the present case, it is evident that it was not the property of Mr. Breck, or Mr. Sowles, or Mr. Bishop the prisoners intended to destroy and plunder, but the property of the enemy, of the Yankees. There is no principle more undoubted than that the intent alone can create crime; and as authorities from the United States must be more readily accepted to establish any point of law, I would refer to Bishop, 1, § 227: "There is only one criterion by which the guilt of men is to be tested. It is whether the mind is criminal. Criminal laws relate only to crime. And neither in philosophical speculation, nor in religious or moral sentiment, would any people in any age allow that a man should be deemed guilty unless his mind were so. It is, therefore, a principle of our legal system, as probably of every other, that the essence of an offence is the wrongful intent, without which it cannot exist. We find this doctrine laid down not only in the adjudged cases, but in various ancient maxims, such as '*actus non facit reum, nisi mens sit rea;*' the act itself does not make a man guilty, unless his intention were so. It cannot be robbery, because open war exists between the two parties, and the law of nations does not regard an act of aggression by the subjects of the revolted country against the persons or property of the parent country as murder or robbery; it is a political or military act." 1 Phillimore, p. 137: "A declaration of war, which enjoins the subjects at large to attack the enemy's subjects, implies a general order. If the unauthorized subject carry on war or make captures it may be an offence against the sovereignty of his own nation, but it is not a violation of international law." Halleck, a major-general in the United States, p. 446: "It has already been stated that war, when duly declared, or officially recognized, makes legal enemies of all the individual members of the hostile States, that it also extends to property, and gives to one belligerent the right to deprive the other of every thing which might add to his strength and enable him to carry on hostilities." Bynkershoek, p. 4: "A nation which has injured another is

considered, with every thing that belongs to it, as being confiscated to the nation that has received the injury. To carry that confiscation into effect may certainly be the object of the war, if the injured nation thinks proper; nor is the war to cease as soon as she has received a reparation or equivalent to the injury suffered. The whole commonwealth and all the persons, as well as the things contained within it belongs to the sovereign with whom they are at war, and in the same manner as we may seize upon the person and upon all the property of our debtor, so a sovereign in war may seize the whole of the subjects and dominions of his enemy." Supposing even the parties might have been in error as to their right to act as they did; supposing they had acted without proper authority, or beyond the ordinary rules of war; that they had been deceived as to their right and duty of obeying the orders of their Government, still if they supposed they were acting upon proper grounds and with sufficient authority, they would, even according to American criminal law, be held innocent; there would be no crime. 1 Bishop, § 242, lays down the law in these terms: "The legal rule is clearly enunciated by Baron Parke. The guilt of the accused must depend on the circumstances as they appear to him. Here the rule is, that if one has reasonable cause to believe the existence of the facts which excuse the homicide, or, to express the idea accurately, if without his fault or carelessness he does believe in them, he is legally innocent, though it turns out that he was mistaken." Is there to be discovered in this case any of that *animus furandi*, which was indispensable for the constitution of criminal offence? We see nothing in the evidence to indicate it. The motive, the impelling power, was patriotism. In no other country, perhaps, but in the Southern Confederacy, would twenty young men be found who would be prepared to risk their lives, to offer them to a certain almost ignominious death in taking possession of a town of four thousand inhabitants. All idea of personal profit, private plunder is excluded by the facts. Moreover, the offence must be one that would be so qualified by the tribunals of the country demanding the extradition; it must be a crime according to their legal definition, and extradition can be demanded only by the party to the Treaty. The question will naturally arise, does the party to the Treaty, the association of States, still exist? Is it not broken *de facto* and *de jure* in the eyes of England, who recognises them as two distinct belligerent nations? But admitting that the Treaty remains unimpaired, it will not be denied that the offence must be one which *all* the United States—South Carolina as well as Vermont—should acknowledge as such, and would so be considered by all the tribunals of all and each State.

The crime must be one universally admitted as such by all the

United States parties to the Treaty, not solely by the definition of one or ten States. Would the parties be tried or held as felons in their States, in Richmond, in South Carolina, Georgia, Tennessee, or in any of the Confederate States, who were parties to this Treaty? Can it be presumed that they demand the extradition of these men? Assuredly not. The contrary is the case. Can, then, our Government and our Courts, in justice, as a fair interpretation of this compact, yield to the exasperated feelings of a section, however large, however powerful, of the contracting parties, who choose to stamp an act as criminal for the sole purpose of using the Treaty as an engine of oppression against the other section. Every bad case founded on wrong principles and bad law is prolific of dilemmas. The United States contend, and this Court has decided, that the Treaty in question not only covers offences against the United States *eo nomine*, but offences against each State. We are bound to acquiesce in that decision, but it inevitably leads to one of two conclusions—first, that the offences so enumerated are to be those crimes as defined by common law; or secondly, those defined by the Statutes of each separate State. That statutory crimes are not intended to be included, the Executive of the different States have repeatedly declared. It is universally held, that by the Constitution, statutory offences are not to be included for extradition between themselves. No statute of Vermont, therefore, concerning robbery or murder, affects this case. Vermont might make stealing of a horse murder. In the Southern States stealing of a negro is capital robbery. Duelling is allowed in some States; in others it is made murder by statute. The slave trade is defined as piracy by some laws. The offences enumerated in the Treaty, for which extradition alone can be granted, are arson, robbery, forgery, piracy, murder, as defined by common law in all and every State. The question is, therefore, repeated, whether by the common law of Florida, Carolina, and all the Confederate States controlled by the state of war now existing, the offences against the prisoners would be admitted as such.

The political character of the deed would be of itself sufficient to dispose of the present application, and the case of the prisoners might rest surely on this ground alone; but independently of this reason the military character of the prisoners and of the deed, would also be a complete answer to the demand for their extradition. It is established beyond a doubt, that the prisoners were soldiers regularly enlisted and in the active service of the Confederate States at war with the United States. Great Britain and all the civilized world acknowledge them as belligerents. The moment it is proved that these men were regular soldiers of the Southern Confederacy, duly commissioned, organized and acting with the sanction of their Government, there ends all question as to the application of the statute.

There can be no possible violation of the municipal laws of the enemy by soldiers of the belligerent. They owe no obedience to the enemy's laws, because they owe the State none. They are not bound to respect the lives of their enemies, the property of the enemy; they are engaged to wage war, to kill, and to destroy property. Rules have been established to regulate hostilities in the conduct of the war, but these rules belong not to the municipal code; their infractions are left and appertain exclusively to the military authorities and to the military code. An offence of this kind cannot be construed into a crime defined and regulated by the statute of Vermont. The law under which they come is found in that chapter of international law devoted to war. 2 Burlamaqui, p. 192: "Most nations have fixed no bounds to the rights which the laws of nature give us to act against an enemy; and the truth is, it is very difficult to determine precisely how far it is proper to extend acts of hostility, even in the most legitimate wars, in defence of our persons, or for the reparation of damages, or for obtaining caution for the future, especially as those who engage in war, give each other, by a kind of tacit agreement, an entire liberty to moderate or augment the violence of arms, and to exercise all acts of hostility, as each shall think proper. And here it is to be observed, that though generals usually punish their soldiers, who have carried acts of hostilty beyond the orders prescribed; yet this is not because they suppose the enemy is injured, but because it is necessary the general's orders should be obeyed, and that military discipline should be strictly observed. It is also in consequence of these principles, that those who, in a just and solemn war, have pushed slaughter and plunder beyond what the law of nature permits, are not generally looked upon as murderers or robbers, nor punished as such. The custom of nations is to leave this point to the conscience of the persons engaged in a war rather than involve themselves in troublesome broils, by taking upon them to condemn either party. It may be even said, that this custom of nations is founded on the principles of the law of nature. Let us suppose that in the independence of the state of nature, thirty heads of families, inhabitants of the same country, should have entered into a league to attack or repulse a body composed of other heads of families. I say, that neither during that war, nor after it is finished, those of the same country, or elsewhere, who had not joined the league on either side, ought or could punish, as murderers or robbers, any of the two parties who should happen to fall into their hands. They could not do it during the war, for that would be espousing the quarrel of one of the parties; and since they continued neuter in the beginning, they had clearly renounced the right of interfering with what should pass in the war. Much less could they intermeddle after the war

is over, because, as it could not be ended without some accommodation or treaty of peace, the parties concerned were reciprocally discharged from all the evils they had done to each other. The good of society also requires that we should follow these maxims. For if those who continued neuter had still been authorized to take cognizance of the acts of hostility, exercised in a foreign war, and consequently to punish such as they believed to have committed any injustice, and to take up arms on that account; instead of one war several might have arisen, and proved a source of broils and troubles. The more wars became frequent, the more necessary it was for the tranquillity of mankind not to espouse rashly other people's quarrels. The establishment of civil societies only rendered the practice of those rules more necessary; because acts of hostility then became, if not more frequent, at least more extensive, and attended with a greater number of evils. Lastly, it is to be observed, that all acts of hostility which can be lawfully committed against an enemy, may be exercised either in his territories, or in ours; in places subject to no jurisdiction, or at sea. Vattel, p. 293: "The sovereign is the real author of war, which is carried on in his name and by his order. The troops, officers, soldiers, and, in general, all those by whose agency the sovereign makes war, are only instruments in his hands. They execute his will and not their wn." If the prisoners as soldiers had committed acts of violence unauthorised by their superiors, they were responsible to them; if the acts were beyond the ordinary outrages sanctioned by the usages of war, they might be made accountable to the enemy, if captured and tried by military court-martial and treated accordingly, but the offence could never be converted into one against the municipal laws. When Beal was taken prisoner in the United States, although a companion, a soldier of Burley, who has been extradited for robbery, they tried him by court-martial, and they sentenced and executed him as a soldier, for an offence against the laws of war. The printed directions and regulations for the United States' armies contain special provisions for cases of this kind, and prove conclusively that in the opinion of the United States authorities themselves, no other law is applicable than the military code. Such offences fall exclusively within military jurisdiction and military law, who for certain violations of the rules of war can deprive soldiers of the immunity attaching to prisoners of war.

No. 84 of these regulations states: "Armed prowlers, by whatever names they may be called, or persons of the enemy's territory who steal within the lines of the hostile army, for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoners of war." Can

any example be found in the history of any war of a soldier taken in the open fact of a murder or robbery of the enemy, and left or delivered over to the enemy for trial before the civil courts of the country against which he was engaged in war? When Wellington was in Spain, in the country of an ally, he did not acknowledge even then the civil jurisdiction over his soldiers, committing depredations expressly prohibited by his orders; he did not send them to be tried by the Spanish courts of justice, but he ordered them to be tried by court-martial, and they were sentenced to be hung by their own military courts. In the present case the acts were done under a special commission. Whenever a soldier has a commission, he becomes an instrument of war,—the presumed authorized agent and representative of the belligerent power for every act he may do, for every injury he can inflict. His conduct is fully covered by his commission. Chancellor Kent, a most eminent American judge, 1st. vol. of his Commentaries, writing on international law, p. 94, 96, says: "Although a state of war puts all the subjects of the one nation in a state of hostility with those of the other; yet, by the customary law of Europe, every individual is not allowed to fall upon the enemy. If subjects confine themselves to simple defence, they are to be considered as acting under the presumed order of the state, and are entitled to be treated by the adversary as lawful enemies; and the captures which they make in such a case, are allowed to be lawful prize. But they cannot engage in offensive hostilities without the express permission of their sovereign; and if they have not a regular commission, as evidence of that consent, they run the hazard of being treated by the enemy as lawless banditti, not entitled to the protection of the mitigated rules of modern warfare. If they depredate upon the enemy without a commission, they act upon their peril, and are liable to be punished by their own sovereign; but the enemy are not warranted to consider them as criminals; and as respects the enemy, they violate no rights by capture. Such hostilities, without a commission are, however, contrary to usage and exceedingly irregular and dangerous; and they would probably expose the party to the unchecked severity of the enemy, but they are not acts of piracy." 1 Philimore, 393: "So long as these vessels (private ships) sail under a national commission, and within the terms of that commission, it is quite clear that they are not and never have been considered as pirates by international law. And even if they exceed the limits of their commission, unwarrantable acts of violence, if no piratical intention can be proved against them, they are responsible to, and punishable by, the state alone from which their commission has issued." Wheaton, 247: "The officers and crew of an armed vessel, commissioned against one nation and depredating upon

another, are not liable to be treated as pirates in thus exceeding their authority. The state by whom the commission is granted being responsible to other nations for what is done by its commissioned cruisers, has the exclusive jurisdiction to try and punish all offences committed under color of its authority." The same author in a note, p. 248: "But in the case of one having a commission from a party to a recognized civil war, no irregularity as to acts done *jure belli*, will make him a pirate. He stands in the same position as if he held a commission from an established government, so far at least as regards all the world, except the other party to the contest. His acts may be unlawful when measured by the law of nations or by treaty stipulations. The individuals concerned in them may be treated as trespassers; and the nation to which they belong may be held responsible by the United States; but the parties concerned are not pirates." The same author, p. 626: "The effect of a state of war, lawfully declared to exist, is to place all the subjects of each belligerent power in a state of mutual hostility. The usage of nations has modified this maxim, by legalizing such acts of hostility only as are committed by those who are authorized by the express or implied command of the state. Such are regularly commissioned naval and military forces." The same doctrine is laid down in Halleck, a general officer in the United States' service. In his book on International Law, p. 306 and 386, he says: "That the sovereign alone is to be held guilty for the acts of unlawful war; that he alone is bound to repair the injuries, and not those who act under his authority." No principle seems to be more clearly admitted by all the best American authorities, and all writers on international law, that the soldier's commission is a complete justification and protection for all his acts; that he cannot be made responsible, except to his state alone, for any unwarrantable act of violence; that no excess of violence can give to the municipal tribunals any jurisdiction over him. No one has the right, because none has the means, to judge him, to convict him of the crime of absence of authority on the part of his government. In this case the acts were done in direct obedience to the authority of superiors, who, by their commission, delegated to their officer the right of waging war, destroying the enemy, and devastating the country. The leader of the party had a special commission for this particular object. To him was entrusted the direction of the whole plan. He stood, with respect to its execution, in the position of a general invested with all the authority of the state with whom alone rested the responsibility of the outrage. The mode of fulfilling such orders was a matter for the conscience only of the officer and for the authorities ordering them. The Americans complained bitterly; and we find recorded in every one

of their writings, when occasion is offered for comment, a most strong condemnation of acts which they qualify as outrages of the worst character, committed by Admiral Cochrane, in the war of 1812. Small, open and defenceless towns were burned and sacked; unarmed and unoffending people were killed. The American Government did not then qualify such acts as murder and arson. They applied to the British authorities to ascertain if these acts had been authorized. The answer given was, that the injury had been authorized, and ordered as measures of retaliation. Will it be pretended that if the Admiral or any one of his command had afterwards, or during that war, been found in Spain or Portugal, that he could have been given up on a demand for extradition made by the United States? If the British Government could order these destructive acts, from motives of policy, the Southern States may have the same and better causes of retaliation for outrages committed by the Federal troops in the South. But whether the raid in St. Albans was ordered or not, whether for one purpose or another, it was essentially a military act.

MONDAY, March 2nd.

I have shown that by the interpretation universally given, and by positive declarations emanating from the highest authorities of both contracting parties to the treaty, that political offences, or any crime arising from wars or intestine commotions, cannot come within the treaty, and I have established that the acts imputed to the prisoners were acts of that class; that moreover, it was an offence committed by soldiers, therefore, a military not a civil or municipal offence; that the commission of the soldier was alone required to establish his character, and was complete justification to protect him from extradition. Before closing my remarks on this point, I will refer to two important documents which have come to light since the last sitting of the Court. The first is the despatch of Lord John Russell, in answer to Mr. Adams' complaint of the proceedings of the Court of Bermuda, who discharged parties accused of piracy by the United States Government for having taken possession of the United States' vessel Roanoke, after going on board at Havana as passengers, and destroying her. Lord John Russell says: "The other complaint is, that certain passengers proceeding from Havana in the United States vessel Roanoke, when five hours from Havana on their voyage, rose on the captain, made themselves masters of the vessel, destroyed her, and were afterwards permitted to land on the island of Bermuda. The answer to the second complaint is: That the person arrested for a supposed piratical act produced a commission, authorizing that act as an operation of

war from the Government of the so-called Confederate States, which are acknowledged by her Majesty's Government to possess all belligerent rights." The statement made in this despatch affords the most conclusive authority in favor of the prisoners, to establish the principle that a commission from a belligerent is all that can be required to justify any act of hostility against an enemy. The act alluded to in this despatch, certainly, affords good subject for criticism by the rules of war. Secretly and by disguise entering a ship as passengers, and then rising on the crew, taking possession of her and destroying her, might be questioned as a legitimate or regular act of war, sanctioned by modern usage, but this question could not be raised after the production of the commission; the only justification required was the commission. The other and a most important document is the report of the trial of the unfortunate man Beall, who was acting under the orders of Burley, who was extradited for robbery by the judiciary of Upper Canada, although the offence was identically the same as that of Beall, his subordinate. Beall was brought before a court-martial and tried there, not for robbery but for a political and military offence, the violation of the rules of war. The charges are specified as follows:

"Specification 1.—In this, that John Y. Beall, a citizen of the insurgent State of Virginia, did on or about the 19th day of September, 1864, at or near Kelly's Island, in the State of Ohio, without lawful authority, and by force of arms, seize and capture the steamboat Philo Parsons.

"Specification 2.—In this, that John Y. Beall, a citizen of the insurgent State of Virginia, did on or about the 19th day of September, 1864, at or near middle Bass Island, in the State of Ohio, without lawful authority, and by force of arms, seize, capture and sink the steamboat Island Queen."

Upon this accusation, the United States authorities, through the Judge Advocate, declared that this very offence, for which they obtained the extradition of Burley, was a political and a military offence. They positively declared that the offence is not a civil or municipal one, that it cannot be the subject matter of trial by ordinary Courts of Justice. Here are his very words:

"I was willing to admit that Beall was a rebel officer, and that
"all he did was authorized by Mr. Davis; because in my view of
"the case, all that was done by the accused, being in violation of
"the laws of war, no commission, command or manifesto could jus-
"tify his acts.

"It is true, that if these enormities had been committed in time
"of peace, or by ordinary citizens, rogues and desparadoes, they
"would have been mere municipal or civil offences, and the perpe-
"trators would be amenable to the civil Courts and entitled to the

" trial by jury. But the accused is not prosecuted for a civil " offence. He is by the theory of this case a military offender, a " violator of the laws of war. He refers to a quotation of Holt's " Digest, p. 79, to show that murder, which is a civil offence under " ordinary circumstances, may and does, in time of war, when com- " mitted for disloyal and treasonable purposes, become a military " offence, and may then be tried by a military Court, without the in- " terposition of a jury. In time of war, the offender being a rebel " officer in disguise, the question of intent, the *quo animo*, is very " easily determined. In this case it is very clear, that personal " advantage was not the motive that led to the seizure of the " steamboats, or the attempt on the railroad. To destroy the " commerce of the lakes was one of the objects avowed by the raid- " ing party on Lake Erie ; to inflict great injury upon great num- " bers of their Yankee enemies, and not the crazy expectation that " a gang of five rebels could overcome and plunder a thousand " passengers, was the purpose of the railroad attack. The acts " charged and specified, being military offences are triable by a " military Court, and the accused has no constitutional right to a " jury trial."

This trial and the sentence against the unfortunate accused which was carried into effect, is the denial by the American authorities themselves of their right to demand and to obtain the extradition of Burley, or of the prisoners in this case. They admit that it was a political offence, that it was not inspired by the desire of private plunder, that it was solely and exclusively a deviation from the usages of war, an offence to be dealt with by the military tribunals. If such was the case for Burley and Beall, can it be doubted that the same principles should apply to the prisoners? I shall again on this point refer to the regulations of the United States' armies—sanctioned and ordered by the Government :

Page 12, No. 40 : " There exists no law or body of authoritative " rules of action between hostile armies, except that branch of the " law of nature and nations, which is called the law and usages of " war on land." No. 41 : " All municipal law of the ground on " which the armies stand, or of the countries to which they belong, " is silent and of no effect between armies in the field."

Offenders against these usages of war are tried by military courts of the enemy ; they may be sentenced, they may be hung or shot, and justly too, according to the laws of war, and nevertheless they may be morally innocent. The military spy who is found in the lines ; the scouts who are ordered to go in disguise through the lines of the enemy to observe its movements or to destroy a telegraph ; the messenger who, for the safety of an army, in obedience to the orders of his officers goes in disguise through the enemy's lines, to

convey a message to another division, if found within his lines, the enemy is justifiable in trying them and executing them, but the victims are devoted, sometimes the most noble soldiers. They are in conscience, in the eyes of the world, and before God, free from guilt of any kind. The case of the unfortunate Major André is a striking illustration of this.

It is the same principle in this case. It was, it might have been thought by the Confederate Government of great political moment, and dictated by the best reasons, to order this raid in St. Albans. Being unable to effect it by an army sufficiently strong to run over the whole territory as Morgan attempted, they call upon soldiers to do it by artifice, by reaching that spot in disguise and then to levy the contribution, or plunder and destroy. They did so boldly and openly in broad day light. They were liable, if taken, to be shot on the spot; little chance could they have of escape. If they had been taken in the execution of these orders by the enemy, and tried and condemned by a military Court, would they not have been innocent—could they not feel in their conscience that they were not criminals?

It has been said, and it will be probably repeated here, that this is not a proceeding sanctioned by the law of modern warfare. Admitting it was a violation of the usages of war, is there according to the laws of nations, a tribunal in any country entrusted with the power of judging nations and condemning their policy? If they deem it expedient to deviate from the rules prescribed by justice and humanity, they are not accountable to other nations their equals; for independent nations acknowledge no superior on earth. This is an elementary principle of the law of nations. The only question therefore can be whether it is an hostile act committed by an enemy against an enemy, or by the soldiers of one belligerent against the enemy. Taking it to be an unjustifiable violation of the most unquestionable rules of warfare, still it would be an act of war; irregular, if you choose, but nevertheless an act of war. It might be a violation of the rules of war, but it could not be an infraction of the statute of Vermont. It might be censurable, politically immoral, but not criminal in the civil or municipal sense of the word. It never could be defined murder or robbery, contemplated by the treaty. I contend however that the conduct of the prisoners is perfectly justifiable if tested by the principles of common and ordinary warfare.

Supposing these twenty men to have been detached from the lines, for the special purpose of taking and plundering any of the small towns on the Potomac, to levy contribution by obtaining delivery of all the funds in the possession of the banks, or to retaliate by plundering and burning it, and let us suppose they had succeeded in doing so. What objection could be made? no iniquity,

no violation of the laws of war would be discovered. Supposing these twenty men would have been detached from Morgan's command, when he effected his raid in Kentucky, and going at a great distance from the main body, would have attempted the same in Pennsylvania, would not such a feat have been considered as bold and daring, would a newspaper have dreamt of making an outcry in support of the principles of modern civilized warfare? Would the parties have been styled by them murderers and robbers? Supposing in such an instance they would have been captured with their plunder, would they have been made prisoners of war or been dealt with as criminals? Remove the scene of action, extend the distance, multiply the difficulties; let these men go in disguise through the whole breadth of the enemy's territory, back to the Canadian frontier, to St. Albans; let them be bold enough to attempt such a project there with twenty men and carry it out, will the distance or the greater difficulties alter the nature of the case? Will the first be according to the rules of war, and the last a violation of them? Will the parties engaged in the first expeditions be brave soldiers, heroes, and those concerned in the last, murderers and robbers? On what ground? Where is the difference in the supposed occurrences and the one complained of? What constitutes the criminality which would so alter and pervert the one so as to change a laudable act into a most atrocious and revolting crime? Is it because it was so far from the focus of the war. Does any rule exist in war whereby certain portions of the enemy's territory are exempt from hostilities? We have heard of modern usages of war, but this is certainly the most recent enactment; and probably the learned Counsel for the applicants will furnish us with the text laid by some writers on the subject.

If such a rule exists, the morality of a deed would depend upon its geographical situation. If a thing is done on the Rappahannock, it is right and legitimate; but as you go northwards, the morality may decrease; it altogether changes and is altered, so, that when you reach near the forty-fifth degree of latitude north, then it is converted into an absolute crime. It must be admitted that the ignorance of this rule of war might be invoked, at least, as a good excuse to the parties infringing it, to free themselves from all criminal intention in the matter.

It will be said that they violated neutral territory. Admitting that they did, who has a right to allege it or to complain? Will that change the nature, the character of the deed? It may be a separate, independent offence; but the violation of neutrality laws cannot certainly convert an act otherwise non-criminal into a crime. If the parties went there as soldiers or as engaged in this

civil war, will the fact of committing a trespass on neutral ground change their intent, deprive them of their character of soldiers or partizans and transform them into common criminals? It would be a new principle of modern warfare that a trespass on neutral territory would convert an act of war into a crime. The judge is not called upon to decide a breach of the neutrality laws, but upon the criminality, the criminal intent of the prisoners. He is called to satisfy himself that an offence against the municipal laws of the United States has been perpetrated by them. If they had violated the territory of Great Britain, they were amenable to the tribunals of the country, and responsible to them alone, and not to the United States. We can, however, dispute the violation of the neutrality. Two facts only have been established from which any such presumption might arise,—Young's interview with Mr. Clay at St. Catherines, and the travelling of five of the soldiers engaged in this business through Canada. Besides this, there is nothing in the evidence to constitute a violation of the neutrality. How will the transmission of orders by a Government agent to one of the officers of that Government, supposing it were to direct his movements in a hostile expedition, of itself constitute a violation of neutrality? If such a principle was affirmed, then England could not act through her ambassadors or her navy officers, when in neutral ground or neutral ports, to convey orders or instructions to those directly engaged in hostilities. The correspondence, the transmission of orders, would be declared a breach of neutrality. The quiet passage of unarmed soldiers never did, according to the laws of nations, constitute, even with the intent and object to reach the enemy's territory, a violation of neutrality. On the contrary, the peaceful transit of troops is recognized by the law of nations, and both belligerents can exercise it. In this war the United States have exercised such right in Canada. It is proved, on the other hand, that the whole plan was arranged in hostile territory. The enlistment and the preparation of the scheme was settled upon in Chicago. The act, however, as to its criminality with respect to the subject-matter of the treaty, must necessarily be examined, independent of any foreign or collateral circumstances, and, considered in this light, no criminality whatever can attach to it. It is essentially a hostile act, an act of war.

Burlamaqui defines war to be the state of those who try to determine their differences by the ways of force. Wheaton, p. 586—"The rights of war in respect to the enemy are to be measured by the objects of the war. Strictly speaking, it is the right of using every means necessary to accomplish the end." 2 Kluber, p. 18—"Les droits de la bonne cause (which must be held, by the neutrals, that of each of the belligerents) envers la partie qui fait une

guerre injuste sont illimités. Il n'y à donc aucun moyen, quelque violent qu'il soit que l'ennemi ne puisse employer." Bynkershoek, p. 2 and 4, goes even further, and lays down the rule in absolute terms, that the enemy can use every means possible against his enemy, admitting that there is no limit to the right of injuring the enemy. Vattel, p. 346–369; 1 Hautefeuille des Neutres, p. 132, 133, 150; 2 Kluber, p. 21, 53, 56. All the writers on the subject admit that such is the original and the actual absolute right. Civilization and the well-understood interests of all communities have prescribed moderation in the exercise of this right, and established exceptions to this absolute principle of the law of war, by sanctioning certain rules which have generally been adopted by common consent and common practice, without however abrogating the primitive and original right, which still remains in the eminent domain of every nation to be exercised, when, in the judgment and conscience of the constituted authorities, its application may be deemed necessary. The right to do your enemy all the injury possible still subsists as the fundamental principle of war. "If," says Paley, "the cause and end of war be justifiable, all the means that appear necessary to the end are justifiable also. This is the principle which defends those extremities to which the violence of war usually proceeds; for since the war is a contest by force between parties who acknowledge no common superior, and, since it includes not in its idea the supposition of any convention which should place limits to the operations of force, it has naturally no boundary but that in which force terminates,—the destruction of the life against which the force is directed." Every writer upon war lays down the same principle as the illustrious English philosopher and divine whom I have just quoted. War is licensed murder, pillage, plunder, devastation, and destruction. Humanity may shudder, philosophy may revolt, and seek to soften and relax the rigor of this fundamental axiom of the laws of nations. Beyond and outside of this principle of unmitigated and unrestrained hostility, there are no laws of war, except those implanted in the breasts of the belligerents by the Creator. All the ameliorations of this great principle should be styled rules and usages of war, superinduced by the teachings of wise and humane authors, and encouraged by the practice of the greatest and best generals. There is no rule of war which makes exemption of private property from capture, plunder, or destruction. Soldiers are considered by all nations as mere instruments of war, passive mechanical agents of a superior moving power, which alone is responsible for their actions. Every act of hostility committed by them must be considered as an act of war unless disapproved of and condemned by the nation to whom they belong. The parties to this application have acknowledged the

prisoners as their enemies, and as soldiers acting on behalf of the Confederate States. The parties in this case themselves have qualified this very act of the prisoners as an act of war. The banks did so by a public notice given to the world, and which is proved in this case, offering a reward of $10,000 for the apprehension of the armed raiders who had plundered their institutions, "*an armed band of raiders.*" Mr. Bishop, the witness for the prosecution, and one of the parties who published this notice, says, "I have seen the term *raid* used pretty often during the war. I understand that raiding means the march of an army into the enemy's country; by army, I mean a large or a small number of soldiers." So Mr. Bishop admits that the prisoners were Confederate soldiers, and that they came as such into St. Albans. The definition of the word "raid," given by Mr. Bishop, corresponds with that of all the American dictionaries. Raid is defined, a hostile incursion. In General Dix's proclamation, which is also produced in evidence, the prisoners are therein styled *rebel marauders*. The President of the United States revoked the latter portion only of General Dix's order, whereby the latter invited every American commander on the frontier to cross the boundaries, and leaves the first portion subsisting, which contained the distinct admission that the prisoners were rebel marauders. This was a positive admission by both the military and executive authorities of the United States, that the parties engaged in this act were military men, that they were rebels, and that their object was a politico-military one; which was in direct opposition to the demand now made for extradition. So, the parties injured, the military authorities and the executive of the United States, have admitted that the accused were rebel soldiers, and that they committed the outrage as such. The best proof of the politico-military nature and character of the deed of the prisoners is the very issue raised in this case. At every step, at every stage, your Honor is called upon to apply a principle of international law. It is the only measure by which the facts can be tested. The prisoners assert their immunity as soldiers; they rely for their justification on the law of war, and contend that their act is part of the hostilities of their country against their enemies. The applicants on their side will, no doubt, contend that the prisoners violated the rules of war regulating the mode of carrying on hostilities. So, it becomes entirely a question of transgression of the usages of war, even in the opinion of the applicants themselves. The laws of war are part of the international laws; every question of international law on this subject is political. To ascertain the criminality, to be satisfied of it, the judge must first decide that a violation of those laws has been committed; he must sit on judgment upon nations, condemn the

one to whom those soldiers belonged, and whose agents they were, and after pronouncing the illegality of the act, deprive them of the immunity granted to soldiers by all civilized communities in the world, and stamp them as common robbers and murderers. Taking for granted that the Court can take cognizance of the laws of war, and decide upon the right or wrong of a cause adopted by one of the belligerents, then the party so held to account would be entitled to offer his justification on the ground of retaliation. The undisputed and uncontradicted rules of war, under their mildest form, allow devastation and plunder of inoffensive and unarmed citizens for retaliation. All the modern rules of warfare are often suspended to give full scope to the most severe rules, when necessity or even expediency require. If justifiable in any case, who shall judge of the right? The prisoners in such a case would be entitled to offer their justification, on the plea of retaliation for worse outrages committed in their country by Federal troops. The Confederate Government assert their right to retaliation; they contend that the Federal soldiers have committed outrages unparalleled in any war. If so, the deed complained of is and must be considered free from all censure. But the judge cannot make or allow this investigation. This evidence has been properly excluded, because the judge cannot ransack history to find out the guilty nation, to determine whether *retaliation and retortion* ought to have been made. Therefore, it is, that every where, when a deed has been committed by regular commissioned soldiers, every nation and every tribunal of every nation are bound to presume that some good reason existed for it, and accept it as an act of war. If the Federal authorities deem it an outrage, a gross violation of the rules of war, let them take to account the Confederate authorities, and ask explanation from them, as they did of the British Government in 1812; and if they do not obtain satisfaction, let them retaliate. Until they have obtained explanations, they are bound to consider the acts of their enemy's soldiers as acts of their enemy.

In this case there was something even more directly showing the political character of the deed. Taking for instance the effect that this outrage had had in the North; the fact that the whole civil and military authorities were incensed, and almost threatened to wage war on Great Britain; did this not show that it was a well concocted effort to bring succor to those who planned it; that it would have the effect of calling back part of the army from the front for the protection of the frontier? Was this not a very important political act on the part of the South? But this was a point on which it was unnecessary to dwell. The political and military character of the offence had been established beyond a doubt. It was in every way an act of war even if it was not in accordance with the common usages.

Independently of the reasons given to refuse extradition on the grounds of the political and military character of the offence, the fact that this expedition was directly ordered by the Confederate authorities affords complete justification for whatever the prisoners have done.

It is proved that the leader of the party, Bennett H. Young, was regularly appointed for special service. His instructions were to collect twenty men Confederate soldiers who were then in the enemey's lines and to report to Mr. Clay for orders. By these instructions, the Government to whom he owed civil and military obedience declared to Young that Mr. Clay was to all intents and purposes their representative, that Mr. Clay was their agent, and this authority was just the same as if the orders had come from the President himself accompanying the instructions appointing Mr. Clay, Government agent. Young could not dispute or even question Clay's authority. His superiors enjoined him to comply absolutely and unconditionally with his directions. He was informed that Mr. Clay was the direct channel of the Government, and so far as the object of this mission was concerned and all its details, was the Government itself. Whatever Mr. Clay would have deemed necessary to order, was as fully within these instructions as if had been included in the commission itself. It matters not what was the general authority of Mr. Clay with respect to the Confederate States, or in what position he stood towards; them it matters not what was his appointment or office. In relation to Young's mission, his authority from the Government was unlimited, and so appears from the tenor of the documents adressed to Young. He had to direct absolutely, and Young and his party had to obey.

Were the prisoners to take upon themselves to criticise the orders and instructions of their Government? Could they as soldiers scrutinise the documents, investigate the nature and duties of governments, ascertain whether they went beyond the ordinary limits for action fixed by the rules of international law? If they obeyed these orders, can they be amenable as common criminals to the tribunals of the Federal Government, there to be tried as common highwaymen? As subjects to the Confederate Government and as soldiers, if they refused to obey orders they are to be tried and shot; and it is now contended, by the applicants, that for having obeyed, they must be deprived of the immunity belonging to soldiers, and delivered to their enemies to be tried as common criminals.

The prisoners fulfilled their mission, they executed the orders given to them. They proceeded from Chicago where their party was formed, where the plan was made to assail the northern frontier of the enemy. It was discussed and settled there; St. Albans was selected as the spot to be first operated upon. Young went to

St. Catherines to confer with Mr. Clay who sanctioned the whole expedition, and in fact ordered it. That Mr. Clay did order it, there can be no doubt. He repeatedly admitted it. Several witnesses testify to it, particularly Mr. Cleary, and the two Messrs. Sanders. In a matter of this description the declaration made by the official appointed for such specific political object, must be considered as the best evidence. Young returned to Chicago, and thence proceeded through Canada, as an ordinary traveller, to St. Albans. It is proved that four only of his command passed on British territory. The others were and had been living and plotting in the enemy's lines. The only supposition as to them must be, that feeling secure enough to conspire in the enemy's territory and to remain there, they could as well come through American ground to St. Albans; which was probably the better way to avoid rousing the suspicions of the people of St. Albans. They arrived in St. Albans on the afternoon of the nineteenth of October, they collected together; and in broad daylight, at two o'clock of the afternoon, in a town of four or five thousand inhabitants, took possession of three banks, plundered them, attempted to set fire to the place, provided themselves with horses which they took from the citizens, and effected their escape with their booty from amongst the population who rushed to arms and pursued them, firing. It may be termed an outrage, a violation of the modern usages of war; but history will look upon it as a bold and daring feat.

It was within the power of the Government to order Young to sack and burn the town, and he had to obey his orders, not to take upon himself to judge of his superiors. He had only one duty to perform, and that at the risk of his life. He stood in the same position as a general who had received orders to invade the territory of an enemy for some purpose; and the moment the Government declared that that party were acting for them, there ended any responsibility on the part of the individual. The Government could not be judged by any court. The party who obeyed was right. He acknowledged no other superior than the Confederate Government, and he was bound to do his duty as a soldier, and not hesitate when called upon to execute a commission of danger. He did it, and in the most brave manner in which he could, declaring that he was a Confederate officer, that his men were Confederate soldiers, and what he did was an act of retaliatory warfare for what had been done in the South. For such conduct he assuredly could not be held up as a murderer and robber. From the very origin of the expedition it was a national, not an individual act, for which the parties executing it cannot be made responsible; or in any manner accountable, except to their superiors. They, as soldiers, were mere mechanical agents, passive subjects of the

moving power. Their sole duty was obedience; and for fulfiling that duty they cannot be amenable to the municipal tribunals of the enemies of their government. Obedience to the constituted authorities is a primary and essential obligation of all civilized communities. To render an individual liable for acts done in obedience to positive orders given by the authorities which he acknowledges as his legitimate superiors, would be subversive of all order. It is not in a British court of justice that such a proposition can be doubted. This question never was more ably treated and exposed than by Judge Talmadge, in his review and criticism of the judgment rendered by Judge Cowan in the celebrated case of McLeod. Judge Cowan and the authorities of the State of New York contended there, that an illegal act of war could not be sanctioned by the government of the offender, to shield him from responsibility to the municipal tribunals of the offended nation. This will probably be the doctrine urged by the United States Counsel in support of their pretensions at this moment. No better, more clear and logical refutation was ever made of this fallacy than by this eminent judge, supported by all the most distinguished jurists of that time in the United States, and confirmed by Daniel Webster, the greatest statesman, orator, and lawyer this continent has ever produced. Any of the arguments after those given by such men would be useless. (Then follow quotations from Judge Talmadge's review to be found in 26 Wendell's Rep... and Webster's speech in support of the Treaty at page 122 of the 5th vol. of his works.)

"The attack upon the Caroline, says Judge Talmadge, was hostile and unlawful, and the British must be held responsible for it. It amounts to a lawful cause of war; but those engaged in it or acting under lawful authority can never be regarded as robbers or plunderers, or liable to be punished criminally."

It was then settled at the earnest request of the British Government that the individual could not be responsible for an act committed on behalf of his Government when admitted and sanctioned by it, notwithstanding the American authorities declared that the act in question was illegal, a violation of their sovereignty, for which England should be brought to account.

The same principle was sanctioned by the Courts of England by several positive decisions. I refer to a case in the Privy Council of the Secretary of State in Council of India and Kamachee Boye Sahaba, 13 Moores' Rep., p. 22. The question there arose as to seizure made by an agent of the East India Company, of property belonging to a native prince. The Courts in India had ordered the restitution of the property as having been illegally made. The case came before the Privy Council on appeal, and the judgment declared:—

" Of the property or justice of that act, neither the Court below nor the judicial Committee have the means ef forming, or the right of expressing, if they had formed any opinion. It may have been just or unjust, politic or unpolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their Lordships cannot enter. It is sufficient to say that even if a wrong has been done, it is a wrong for which no Municipal Court of Justice can afford a remedy." The Court held that an act done by an agent of the Government, though in excess of his authority, being ratified and adopted by the Government held to be equivalent to previous authority.

In the case of Buron vs. Denman, 2 Exch. Rep., 167: an action for damages by reason of the Defendant, an officer in the English Navy, destroying slave baracoons. The illegality was established. The English Government, it appeared, adopted his acts as having been done by their authority, which the Court held equivalent to prior instructions; being an act of state, the Crown was held to be alone responsible, and therefore no action would lie against the Defendant.

In Knapp's Rep., V. 1, another case is found where the Privy Council held that Municipal Courts could not interfere to decide upon the legality of any destruction of private property, by an officer *pendente bello*.

These authorities establish that the individual is not responsible for the act committed on behalf of the Government.

Supposing war was going on between the States and England, and a militia officer here was ordered to burn a town on the frontier, would he go to his superior officer with a book on International law, discuss with him the propriety of obeying, and enquire as to the limits of the rules of war? The answer would be given by a Court Martial. It was said that the parties should go before the Courts of the United States, in Vermont, to set up these pleas of justification, where they might be urged with advantage, and where alone they could be urged by the prisoners before a jury on their trial on the other side of the lines. This is a monstrous proposition. The idea of sending them to set up this defence is a cruel mockery, an insult to common sense, an outrage against humanity. They cannot defend themselves there. Every one knows it is impossible for them to be heard upon any of these very grounds which establish their innocence. The moment they reach there all this vanishes, it will not be received. They will scoff at President Davis' commission; they will deny them the privilege of soldiers: none of this will avail them. What justification, what plea can be offered for the prisoners there, when the Judges of the Courts can consider them in no other light than rebels; when Jefferson Davis is considered as a rebel, a private individual whose commissions are entititled to no

consideration, making every act of war on land robbery, and every act of war on sea piracy. Have we not the declaration of the judiciary of the United States on this point fully expressed by Judge Nelson in his charge in the case of the Savannah, before whom commissioned Confederate officers and sailors were indicted as pirates. They pleaded their commission, their belligerent character, the authority of Jefferson Davis. What did the Judge say?

"In a state of war (says Judge Nelson presiding at the trial) between two nations, the commission to private armed vessels from either of the belligerents affords a defence according to the laws of nations in the Court of the enemy against a charge of robbery, or piracy on the high seas of which they might be guilty in the absence of such authority."

"This branch of the defence involves consideration that does not belong to the Courts of this country. Until the departments of state have recognised the existence of the new government the Courts of the nation cannot. Until the recognition of the new government, the Courts are obliged to regard the ancient state of things as unchanged."

These are the words of one of the worthiest Judges in the United States. And this Judge charged the jury to convict these men of piracy. Happily for the prisoners, some of the jurors would not assent to this doctrine; the jury could not agree. But such is the law in the United States. In this same manner would the commission, the instructions, or the belligerent condition of the prisoners be received by the Judge in the State of Vermont before a jury called to try the prisoners. What justice can they expect when the right of defence is absolutely denied? To deliver them would be to doom them to an ignominious and certain death. To extradite them on this ground that they shall have a fair trial, that the responsibility would be with the United States, is as good, as sound an excuse as that of the Inquisitors who, being taxed of sending some innocent victims to death, say we are not responsible for their death, we only deliver them to the secular power, we extradite them; but he alone is responsible for their death. It would be as good a reason as that offered by an individual on a charge of murder for having thrown a man over a bridge and who would offer as his justification that he was not guilty because the man drowned himself, and that he could be made responsible only for depriving him of the use of the bridge.

Let this be a precedent; allow a *prima facie* case to be all that shall be required for extradition, and you must extradite every dangerous enemy of any government. In a civil war you deliver them over to their infuriated enemies, if they be civilians; if they be military, to thier exasperated victims. You send them to plead as S. B. Davis, before a military court martial of his enemies, that he was

the inoffensive and devoted messenger sent to procure, for four unfortunate countrymen, the prisoners, some documents required as evidence to save their lives, and who received for answer to this plea a sentence of death by a court martial. You send them to plead with the same success as Beall, a colleague and fellow soldier in the same deed as Burley, who was extradited for robbery by the judges of Upper Canada, and who pleaded to the charge of destruction of the Philo Parsons a commission and justification by President Davis, and who obtained for answer to this plea a sentence of death, which was strictly executed.

The enemies of the prisoners, they who demand their extradition, cannot judge them: they can only exercise vengeance.

One of the great ends of the institutions of civil society, says an eminent English judge, is to prevent men from being judges in cases wherein they are concerned, and to remit the decision of adverse interest to those who can have no interest in the determination of such cases." In this instance you would deliver the lives of these men, not to the judgment of adverse interest, but to the most bitter and violent passion of hatred, that which can be found in civil wars alone.

No American statesman nor any writer of any moment has ever asserted that these men should be extradited. They have complained of the want of sufficient prevention of such outrages on our part. They claimed that the offenders should be punished for the violation of our soil, for the abuse of our hospitality by the Southern refugees; but none have dared to assert, as a legal proposition, that they were entitled to obtain the extradition of the prisoners. Our Government has complied fully with their demand by the passing of the Alien Bill; and I trust that it will be considered sufficient satisfaction. If this law does not give our neighbors the protection they require, let them demand further legislation on our part,—they will have it. If the right of refuge itself is obnoxious to them, let it be abolished at their request; but so long as it remains unimpaired—so long as our legislature has not abolished this ancient liberty—our judges must and shall uphold it. They will protect the refugee in the enjoyment of that shelter which our institutions guarantee to him. They never will allow policy, expediency, to sway them to overrule principles of law. A thousand times better,—more honorable for us,—more just,—it would be to let the world know that political refugees shall be entitled to this right only when it shall not be dangerous for us; a thousand times better and more humane to give a fair warning to all that the principle, which never was doubted or questioned in England, is inoperative and inefficient in Canada. It was always considered as a beacon light to a safe harbor for distressed political fortunes; if it

be no more so, at least, do not use it as a false light to wreck them. Our courts cannot be influenced by any thing but right and justice; they cannot be made subservient to power or authority. We have not yet reached that state of degradation. We have had unfortunately in this case too strong evidence of direct interference by our local Government. We have seen one Judge suspended, because he discharged the prisoners. Happily, however, we have a Judge who is independent of power, and in whose hands every man in this community would sooner intrust a question of life and death, with all the influence of Government and popular clamor against him, than in the hands of any jury; and I leave the case of the prisoners with unbounded confidence in the hands of your Honor.

March, 21st, 1865.

Mr. Devlin, on behalf of the United States, said:

It is, I have no doubt, as gratifying to you, as it certainly is to the Counsel who here represent the Governments of Canada and the United States, to find that the time and attention bestowed upon this Investigation have at last triumphed over the numerous and unexpected obstacles opposed to its termination, and brought us to that stage of the enquiry which enables us to address your Honor upon the merits of the application for the extradition of the prisoners. The case, as I view it, is one of extreme simplicity; and although it has attained to an unusual magnitude, and attracted public attention perhaps to a greater degree than any demand ever before made under the Treaty, I have certainly so far been unable to discover that it presents any feature calculated to embarrass the Court in dealing with it, or that even tends to withdraw it from the category of crimes enumerated in the Treaty under which we are now proceeding. True it is that the prisoner's Counsel have labored hard to surround the act of their clients with grave international difficulties, and to impress upon it the character of an act of war; but I flatter myself, that submitted as it will be to the test of sound sense and judicial scrutiny, the crime of robbery, of which the prisoners are accused, will still appear, despite all the false coloring under which it has been so ingeniously presented to your Honor's judgment. And here I may remark, that to me it doth seem as if my learned friends fancied themselves endowed with some extraordinary magical influence; for certainly without their supposed possession of some such rare and wonder-working power, it would be difficult indeed to believe that they would have attempted to elevate a daring act of robbery to the dignity of a manly deed of warfare, or claimed for its guilty perpetrators the consideration due to the honest warrior who uses his arms for the legitimate objects of war.

and not as the prisoners did at St. Albans, for the ignoble and savage purpose of robbing and murdering unarmed and defenceless citizens. I have said, your Honor, that this enquiry, notwithstanding the simplicity of the question involved in it, has attained an extraordinary importance, so much so, indeed, thanks to the fertile genius of my learned friends, that it has become a *cause célèbre*. But let me ask what is it that has thus distinguished the St. Albans Raid, and given to it a world wide notoriety? I answer unhesitatingly, its signal atrocity, the fraud and cunning by means of which it was achieved, aided, no doubt, by the extraordinary efforts subsequently made by the friends and sympathisers of the prisoners to strip their wicked deed of its criminal responsibility and to make of them, its guilty perpetrators, heroes if not martyrs. Be this, however, as it may, I entertain the hope, in which I trust I will not be disappointed, that senseless clamor will not here be permitted to drown the voice of public justice. That your Honor, ever mindful of the high and solemn trust reposed in your as one of the chosen administrators of the laws of our country, will not suffer your attention to be diverted from the consideration of the justice of our demand by the inflammatory speeches addressed by the learned Counsel ostensibly to you, but in reality to the passions, prejudices, and sympathies of the auditory which has filled this spacious Court-room from day to day. And, now, let me ask what does the duty imposed upon you require? It demands neither more nor less than that you should give effect to the provisions of a Treaty without which Canada would soon become a place of refuge for criminals of every grade, an asylum for malefactors of every dye. For be it remembered that it was with the object of protecting the subjects of Her Majesty and the citizens of the United States from the direful consequences that inevitably followed where great criminals were allowed to escape the punishment due to their crimes, by fleeing from one foreign territory into another, that the Governments of England and the United States entered into the solemn Treaty which now gives your Honor jurisdiction to investigate the charges preferred against the prisoners. This treaty, as your Honor is aware, was assented to at Washington on the ninth of August 1842, and ratified in the month of October following. I refer to its stipulations, applicable to this case, with the view of showing more clearly the obligations it imposes upon us. It is to be found in the Consolidated Statutes of Canada, Cap. 89, p. 943, and commences thus: "Whereas, by the 10th article of a Treaty between Her Majesty and the United States of America, ratified, &c., it was agreed that Her Majesty and the said United States should, upon mutual requisitions by them or their Ministers, Officers or Authorities respectively made, deliver up to justice all persons who, being charged

with the crime of Murder, or Assault with intent to commit Murder, or Piracy, or Arson, or Robbery, or Forgery, or the utterance of Forged Paper within the jurisdiction of either of the high contracting parties, should seek an asylum, or be found within the territories of the other." Here we find that there can be no mistaking the class of offenders marked out for extradition, which, be it remembered, the same article of the Treaty commands shall be granted "upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and committal for trial if the crime or offence had been there committed, and also provided that the evidence of criminality should be heard and considered by the Judge or Magistrate issuing the warrant, when, if deemed sufficient to sustain the charge, it became the duty of the Justice to certify the same to the proper executive authority, in order that a warrant of extradition might issue." This, your Honor, is the only test to which the guilt of any person demanded under the Treaty can be subjected until he is made to answer for his crime before the tribunals of the country against the majesty of whose laws he has offended. Who will say that this is not a wise measure of protection, if not of prevention, against the commission in our midst of all or any of the foul crimes indicated in the Extradition Treaty? Is there a law-abiding citizen in Canada who wishes for its abrogation? I believe there is not: and yet, strange as it may appear, this investigation has revealed the startling fact that there are at this moment very many among us who erroneously imagine that this national convention, so necessary for the repression of crime, and so needful for the protection of society, dependent for its existence upon the good faith observed in its execution by both the contracting parties, may upon a special occasion be treated with indifference, or, in order to secure the immunity from punishment of some highly favored criminal, be ignored in such case altogether.

In refutation of this mistaken notion of our duties and obligations under the Treaty, I will now read from the published opinions of eminent Jurists and distinguished statesmen, a few extracts, to show their appreciation of the benefits derivable from its existence, and the rule to be observed whenever its execution becomes the subject of demand by either of the high contracting parties.

Upon this point I refer firstly to a debate which took place in the House of Lords, in the month of February, 1842, when this Treaty was the subject of discussion. Upon that occasion Lord Brougham said:—"He thought the interests of justice required, and the rights of good neighborhood required, that in the countries bordering upon one another, as the United States and Canada, and even that in England and in the European countries of France, Holland, and

Belgium, there ought to be laws on both sides giving power under due regulations and safeguards to each Government, to secure persons who had committed offences in the territory of one, and taken refuge in the territory of the other. He could hardly imagine how nations could maintain the relationship which ought to exist between one civilized country and another without some such power.

"Lord Campbell, for his own part, should like to see some general law enacted and held binding on all states, that each should surrender to the demand of the other all persons charged with serious offences, except political; this, however, he feared was a rule or law which it would be difficult to get all nations to concur in."

Upon the same subject, Sir Robert Peel, replying to Lord Palmerston's speech condemning the other provisions of the Treaty, observes:—The next point to which I shall refer is the article of the late Treaty providing for the mutual surrender of persons charged with offences. The noble Lord admits that the general object aimed at by the article is a wise one, that when the countries have a common boundary, the escape of criminals by stepping over that boundary, is prejudicial to the cause of good order, and injurious to the interests of both countries. The reciprocal delivery of heinous criminals is clearly an object of importance to civilized Governments." *Hansard's Parliamentary Debates*, 3rd series, vol. 67, p. 1223.

President *Tyler*, in his Message communicating the Treaty to Congress, observes:—"The surrender to justice of persons, who, having committed high crimes, seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British Provinces of North America are separated from the States of the Union by a line of several thousand miles, and along portions of this line the amount of population on either side is quite considerable, while the passage of the boundary is always easy. Offenders against the law on the one side transfer themselves to the other; sometimes with great difficulty they are brought to justice, but very often they wholly escape. A consciousness of immunity from the power of avoiding justice in this way instigates the unprincipled and reckless to the commission of offences, and the peace and good neighborhood of the borders are consequently often disturbed." (Message of President of U. S. to House of Congress, August, 1842.)

Mr. *Webster*, the American negotiator of the Treaty, in his celebrated speech, delivered, I believe, in 1846, in defence of its provisions, referring to the tenth article under which we are now proceeding, spoke of it in the following terms:—"I undertake to

say that the article for the extradition of offenders contained in the Treaty of 1842, if there was nothing else in the Treaty of any importance, has of itself been of more value to this country, and is of more value to the progress of civilization, the cause of humanity, and the good understanding between nations, than can be readily computed. What was the state and condition of the country on the borders and frontiers, at the time of this Treaty? Why, it was the time when the "Patriot Societies," or "Hunters' Lodges" were in full operation, when companies were formed and officers appointed by secret associations to carry on the war in Canada; and as I have already said, the disturbances were so frequent and so threatening, that the United States Government despatched General Scott to the frontier to make a draft on New York for militia, in order to preserve the peace of the border? Nothing but this agreement between the two governments that, if those "Patriots" and "Barn burners" went from one side to the other to destroy their neighbors' property, trying all the time to bring on a war, (for that was their object,) they should be delivered up to be punished. They were heard of no more," *Webster's Works*, vol. 5, p. 139.)

Vattel, speaking of Treaties, says: "The faith of Treaties—that firm and sincere resolution—that invariable constancy in fulfilling our engagements, of which we make profession in a Treaty, is therefore to be held sacred and inviolable between the nations of the earth, whose safety and repose it secures; and if mankind be not wilfully deficient in their duty to themselves, infamy must ever be the portion of him who violates his faith.

"He who violates his Treaties, violates at the same time the law of nations: for he disregards the faith of Treaties--that faith which the law of nations declares sacred; and, so far as depends on him, he renders it vain and ineffectual. Doubly guilty, he does an injury to his ally, he does an injury to all nations, and inflicts a wound on the great society of mankind."

On the observance and execution of treaties, "said a respectable sovereign," depends all the security which princes and states have with respect to each other; and no dependence could henceforward be placed in future conventions, if the existing ones were not to be observed. The man who violates and tramples under foot treaty engagements is a public enemy, who saps the foundation of the peace and common safety of nations.—(*Vattel*, B. 2, cap. 25, p. 229.)

Upon the same subject, Chief Justice Jay, in his day a most eminent jurist, and, if I mistake not, the negociator of the treaty known as the "Jay Treaty," in delivering his charge to the Grand Jury in the celebrated case of Henfield, tried in the city of Rich-

mond, on the 22nd of May, in the year 1793, for a violation of the neutrality laws of the United States, observed: "Treaties between independent nations are contracts or bargains which derive all their force and obligations from mutual consent and agreement; and consequently, when once fairly made and properly concluded, cannot be altered or annulled by one of the parties without the consent and concurrence of the other. Wide is the difference between treaties and statutes: we may negociate and make contracts with other nations, but we can neither legislate for them nor they for us to vacate or modify treaties at discretion. Treaties, therefore, necessarily become the supreme law of the land. The peace, prosperity, and reputation of the United States will always greatly depend on their fidelity to their engagements, and every virtuous citizen (for every citizen is a party to them) will concur in observing and executing them with honor and good faith; and that whether they be made with nations respectable and important, or with nations weak and inconsiderable, our obligation to keep our faith results from our having pledged it, and not from the character or description of the state or people to whom neither impunity nor the right of retaliation can sanctify perfidy; for although perfidy may deserve chastisement, yet it can never merit imitation."

Upon this branch of the case I will not dwell longer, as I believe that your Honor is as fully sensible of the importance of our executing in good faith our treaty engagements, as have been the distinguished men whose opinions upon this subject I have briefly laid before you. But while it is our duty to give due effect to the treaty when its execution is demanded, we must guard against its being made to become in our hands an instrument of oppression or of injustice. I will, therefore, with the view of showing the justness of the present application, address myself to the consideration of the facts upon which is founded in this instance the demand of the United States for the extradition of the prisoners; premising that before we can invoke the operation of the treaty, we must have clearly, unmistakably, and in accordance with the rules and requirements of the law as it exists, here establish three facts:

First.—That the particular offence which has caused the demand for extradition, was committed at the time and place alleged by us.

Secondly.—That it is one of the offences mentioned and described in the treaty.

Thirdly, and *lastly.*—That the persons whose extradition is by reason thereof demanded, participated in the commission of the guilty deed.

This, your Honor, as I understand the object of our investigation, is the most important branch of our enquiry, and, therefore,

the first to merit our attention. Impressed with this conviction of our duties and responsibilities, I will now proceed to discuss the evidence we have adduced in support of these three propositions.

What then are the facts proved, if any? I answer, that it is proved beyond the possibility of doubt that long previous to the 19th day of October last, the day when the crime in question was committed, a plan was organised in our Province of Canada, by a party of men calling themselves Southern Refugees, who at the time were enjoying the hospitalities of our citizens and the protection of our laws, which plan had for its object the robbery of our neighbours in the peaceful town of St. Albans. It is proved that in pursuance of this illegal and treacherous organization, and two or three days preceding the said 19th day of October, these so-called refugees, to the number of about twenty, secretly left this Province, and stealthily introduced themselves into the town of St. Albans. It is proved that after their arrival there, and so soon as these evil-disposed visitors had marked out the persons whom they intended should become the victims of their cowardly and felonious operations, they cast aside the disguise assumed for the occasion, and in the afternoon of the 19th day of October last, suddenly emerged from their hiding places, and appeared among the unsuspecting citizens of St. Albans, armed with the deadliest kind of weapons; each man of the party threatening instant death to all or any of the panic-stricken citizens who dared to oppose him in his work of plunder.

It is proved, that having been thus armed, some of the gang entered the St. Albans bank, and, having taken violent possession, closed its doors; that immediately after this first act in the tragedy so treacherously performed, Mr. Samuel Breck, unconscious of the danger that awaited him, knocked for admission, and was permitted to enter. It is proved that no sooner had he done so, than the door of the bank was again closed; whereupon he was violently seized by one of the robbers, who presented a revolver close to his head, threatening at the same moment (I use the words of the witness) to blow his brains out if he (Breck) did not then deliver to him a sum of money which he had brought with him to the bank for the purpose of redeeming his promissory note, unfortunately for him, due on that eventful day. It is proved that Breck, seeing that resistance upon his part would but lead to his being shot dead upon the spot, yielded to the threat of his murderous assailant, and allowed him to take his money, amounting to about $300, and which, as I have already stated, he carried with him to the bank for the purpose of paying his note.

It is proved, that during the continuance of this cowardly operation (politely designated by my learned friends an act of war),

others of the same gang were keeping watch on the outside of the bank, with the view of guarding their light-fingered friends in the inside from being suddenly surprised, or even rudely interfered with, in their work of plunder. It is also proved, that others of the same party were, at the same moment, engaged in the highly honorable and of course "warlike act" of stealing horses, with which to enable the honest warriors, one and all, to seek safety in flight so soon as the work of robbery was completed. It is proved, that after their thirst for plunder was satisfied, these valiant soldiers mounted the stolen horses, and, with their ill-gotten booty, fled to Canada, which they had left a few hours before; but mark, not before they had imbrued their hands in the blood of the unfortunate and unoffending man Morrison, whom they then and there, without the shadow of a cause or provocation on his part, brutally murdered. But to this cruel deed I must not make further reference, as it is not at this moment the subject of investigation.

It is also established, that so soon as the report of these infamous outrages upon the lives and liberties, the honor and property of our neighbors, had reached the ears of the Government and people of this Province, they elicited from one and all a general outburst of earnest and well-merited indignation, heightened by a knowledge of the fact that the murderers and robbers had sought a place of refuge in Canada, which they had evidently made the base of their nefarious operations.

It is well known that the Government of this country, animated by a lofty sense of justice, and moved, as well by a desire to mark their abhorrence of the crimes committed at St. Albans, as to maintain our friendly relations with the United States, ordered the immediate employment of every means at their disposal necessary for the apprehension of the offenders; the result of which was the arrest in this Province of thirteen of the gang, all of whom unfortunately were subsequently allowed to escape. How or why this was permitted it is not necessary I should now stop to enquire, particularly as the circumstances under which the prisoners eluded justice, are at this moment the subject of a special Governmental investigation.

What has taken place subsequently is personally known to your Honor. It was upon your warrant that five of the prisoners who had escaped were re-arrested; they are the persons now under examination. So far, your Honor will not fail to perceive that we have proved our two first propositions, namely, that Samuel Breck was robbed, and at the town of St. Albans, in the State of Vermont, one of the United States of America, and within the jurisdiction of the United States, and also that this is one of the crimes mentioned and described in the Treaty.

It is, therefore, only necessary that we should advance one step further, and show that we have proved our third and last proposition, that is, that the crime was committed by the prisoners. And this, I think, we have abundantly established by our having identified two of them, Spurr and Teavis, as the prisoners who personally robbed Breck, and the other prisoners as having aided, assisted, and concerted with them for that purpose. Upon this point I refer to 1 Wharton, American Criminal Law, page 124, wherein the law upon this subject is stated in these words: "It is not necessary that the party should be actually present, an eye or ear witness of the transaction; he is in construction of law present, aiding and abetting, if with the intention of giving assistance he be near enough to afford it, should the occasion require. Thus, if he be outside the house watching to prevent surprise or the like, whilst his companions are in the house committing the felony, such constructive presence is sufficient; one who keeps guard while others act thus, assisting them, is in the eyes of the law present and responsible as if actually present. In case of stealing in a shop, if several are acting in concert, some in the shop and some out, and the property is stolen by one of those in the shop, those who are on the outside are equally guilty as principals in the offence in stealing in a shop."

As to what violence is sufficient to constitute robbery, Archbold, in vol. 3, p. 418, says: "The ordinary mode, formerly of presenting a pistol is sufficient, so, if the robber assault the party in any other way under such circumstances of terror, as to cause him to deliver up his money or other property, or if there be a struggle for the property before it is taken, is sufficient."

If further testimony should be required, it would only be necessary to refer to the voluntary statements of the prisoners, in which they admit their commission of the crime charged against them, but, say they, we should stand excused. Why? Because we informed Breck at the time we robbed him, that we did so in the name of the Confederacy. Truly a very consoling intimation.

Such, your Honor, are the facts; and such, also, is the law upon which we rest this branch of our case. The next consideration that presents itself is: What is the duty of the Judge under these circumstance? Would your Honor, if this crime had been perpetrated in this Province, and within the jurisdiction of this Court, by any of our citizens, with such evidence of its commission as we have laid before you in support of the present charge, hesitate for a moment in committing them for trial? I feel confident you would not; and therefore I venture to say, that if the justice which under similar circumstances we would mete out to ourselves is not denied to the United States, and I hope it will not, your Honor cannot refuse to commit the prisoners now before you, to await the further action of

the Government, upon the demand for their extradition. In support of this view of the case, I will now cite a few authorities, which, I believe, are worthy of your Honor's attention.

THE DUTY OF THE JUDGE.

Sir Cornwall Lewis puts it thus clearly and explicitly: In order to render a system of extradition effectual, the amount of proof, and the formalities required should be as small as is consistent with the prevention of abuse. The essence of the system is, that confidence is reposed in the foreign government and in its administration of criminal law. The assurance of that Government ought to be the chief guarantee against abuse. If, therefore, it claims any fugitive, through the accredited diplomatic channels, and gives a reasonable proof that there has been a proper investigation by the officers of police and the functionaries conducting the preliminary stages of judicature, and that this investigation had led to the conclusion that the person in question is guilty of the offence charged against him, it is desirable that the extradition should take place, upon proof of identity of the party, and without any full investigation, such as a magistrate would make for the commitment of a prisoner in this country. (Lewis on Foreign Jurisdiction, p. 52). And again at page 53, he says: "The recognition of the criminal law of a foreign State, and the confidence in its regular and just administration which is implied in a system of extradition thus carried into effect, is paralleled by the established practice of this and other countries with respect to the civil law."

In fact the rule thus clearly stated has been followed in practice whenever questions under the Treaty arose.

In the Anderson case, Chief Justice Draper, with reference to the case of a party accused of murder, seeking to justify it, observed:—If there is a question of fact to be tried, I apprehend he must be surrendered, as such a question can only be tried in the country where the fact arose. (U. C. C. P. R. Nos. 1 and 2, Vol. II, page 60.)

In the *Chesapeake* case the same question was incidentally disposed of. The Counsel for the prisoners was proceeding to comment on the evidence of authority from the Confederate Government, when Mr. Justice Ritchie observed: "Assuming, as you must do, at this stage of your argument, the correctness of the proceedings against the prisoners, and the Magistrate's Jurisdiction of the offence, do not these questions fall within the province of the Superior Court on the trial of the prisoners? Is it not the Magistrate's duty now merely to see if a preliminary case is made out? I think we must act in this case just as if it was an offence committed here. The question is, would I on the evidence commit for

trial in this country? If so, must I not commit the parties for extradition?"

To this the prisoner's Counsel replied:—In Anderson's case a *prima facie* case was made out, but the prisoner was discharged, and so in U. S. *vs.* Palmer, 4 Curtis, page 314, Parker is found in command of the Retribution, and Braine and Parr acting under him, (Ritchie, J.) I think these questions are proper for a Jury, and not for the Magistrate. His duty is simply to deal with this case as a Magistrate would deal with an offence to be tried in this country. (Chesapeake case, Report, page 35.) The case of Metzger reported in the 5th vol. New Legal Observer, maintains the same doctrine. The Magistrate must commit when there is just ground for suspicion.

I will now, said Mr. Devlin, call your Honor's attention to the case of Joseph Fisher (to be found in *Stuart's* Repts., p. 245,) decided in our own courts. Fisher was accused of having stolen $638 in the state of Vermont, one of the United States of America. Immediately after the robbery, he fled to Canada, hoping, like the prisoners now before the court, to find a safe asylum here. Fisher was, however, not permitted to enjoy his ill-gotten booty in peace. An application was made for his extradition, although, be it remembered, there was at the time no Treaty as there is now for the surrender of fugitives from justice, in existence. The application was founded upon what is called the "comity of nations," and was heard before Chief Justice Reid. That eminent Judge, in disposing of the question, said:—"This right of surrender is founded on the principle, that he who has caused an injury, is bound to repair it, and he who has infringed the laws of any country is liable to the punishment inflicted by those laws; if we screen him from that punisment, we become parties to his crime, we excite retaliation; we encourage criminals to take refuge among us. We do that as a *nation* which as *individuals*, it would be dishonorable, nay, criminal to do. If, on the contrary, we deliver up the accused to the offended nation, we only fulfil our part of the social compact, which directs that the rights of nations as well as individuals should be respected, and a good understanding maintained between them; *and this is the more requisite among neighboring States, on account of the daily communications which must necessaily subsist between them.*

A modern writer (Instit. du Droit des Gens, &c., par le Gerard de Rayneval, liv. 2, ch. 3, ss. 4, p. 134), on the Laws of Nations, says:—"La communication journalière entre deux pais limitrophes est inévitable, et elle doit étre d'autant plus favorisée par leurs gouvernemens respectifs, qu'elle est naturellement fondées sur des besoins réciproques et qu'elle donne par là, lieu à des changes,

d'ailleurs elle établit entre les habitants respectifs des liaisons, et une sorte de confiance qui assurent leur tranquillité, et contribuent à leur jouissances."

Indeed, said the learned Chief Justice Reid, were we to take into account the opinions of modern writers on International law, we would be still more strongly fortified in the principle we here hold, and we see no reason why those opinions should be rejected. At all events, said the Judge, we may safely say, that at the present day the world has become enlightened in the science of government as well as in all the other departments of human knowledge, far beyond what was known to those writers who lived centuries ago; and therefore that the maxims of government of the present day may be considered at least as well understood, and better adapted to the rights and feelings of mankind, than they could have been in the days of Grotius and Puffendorf. What, said this eminent Judge, we have to determine is, whether there was legal gronnd for the arrest and surrender of the prisoner; and we hold there was. The prisoner, said he, comes before us in a very different character from that of a subject to whom protection is due as a matter of right: he is an alien, to whom protection is not due, if the King sees fit to withhold it. The observation of Judge Tilghman may well be applied to him "*that he cannot force himself into the King's territories, and say, you shall protect me.*" It is held (see Chitty on Prerog., p. 49; 1 Black, Com., 259-260), that alien friends may lawfully come into the country without any license or protection from the Crown; though it seems that the Crown, even at common law, and by the law of nations, possesses a right to order them out of the country, or prevent them from coming into it, whenever His Majesty thinks fit: and the reason given is (see 1 Chitty, Crim. Law, 131 and 143, note [a]), that it is inseparable from the governing power in any country, that it shall be able to take precautions against foreigners residing in such country, and particularly in a country where foreigners are only amenable to the ordinary laws. The prisoner, said the Judge, came into this Province under suspicious circumstances, charged with felony; as an alien his conduct did not merit protection—unless he had come with a fairer character—and he ought not to be surprised, nor to complain that His Majesty's Government should direct him to be taken back to that country whence he came.

Applying, said Mr. Doylin, this Judgment to the case in question, may we not say that the prisoners now before this Court should not complain, if you, one of Her Majesty's Judges, should hold that they should be taken back to that country whose laws they so shamefully violated. That having outraged the laws of

humanity as they, the prisoners, did at St. Albans, they have not the right to say, We will force ourselves into your Canadian territory; and though our guilt should involve you in war, we will still persist in demanding that you should assume all the responsibilities of our crimes, and, cost what it may, that you should shield us from the penalty due to our offences. This, said the learned Counsel, is the ridiculous pretension unblushingly set up on behalf of the prisoners, and boldly urged upon the attention of the Court.

The next case to which he, Mr. Devlin, would call his Honor's attention, was the well-known case of Muller, whose extradition was demanded by the British Government upon a charge of murder. The application for his surrender was investigated in the city of New York, before Mr. Commissioner Newton. In rendering judgment, the learned Commissioner made the following pertinent remarks, which will be found at pp. 28 and 30 of the published report of the proceedings had in that case:—

"The evidence is such as would plainly require the commitment of Muller for trial if the offence had been committed here, and it results that a certificate leading to his extradition, that the case may undergo an investigation in England, should be granted." And on this the Commissioner, in the following language, applied the law clearly applicable to that and every other case arising under the Treaty: "Having heard and carefully considered the remarks made by the council for the defence I am at a loss to see, after having carefully considered the testimony, and weighing it in my mind, that there is not sufficient evidence for me, sitting here simply as a magistrate, and the duty for me being simply to determine, not whether the man is guilty or not, but whether there is sufficient evidence to require that he may be committed, in order to afford an opportunity at the place where the crime was committed, of proving his guilt or innocence. It is not necessary for me to say whether I would absolutely convict the man, and sentence him to be hung, were that even in my province, but the duty I have to perform is simply this: first, has there been a crime committed? If committed, is there probable cause from the evidence adduced to say that the accused is the party who has committed the crime? Now it appears to my mind clear, that looking at it in that light—in the light of probable cause,—it is very plain that there is such cause. I do not desire to sit in judgment on this man, but I wish it were in my power to discover any evidence in the case whereby I could withhold the certificate; but I am bound to say that the combined circumstances, to my mind appear so clear and so distinct, that upon the question of probable cause I cannot have any doubt."

In the still more recent case for murder on the high seas, on board the British brig "Raymond," in which the prisoner desired

to show by evidence that the act was justifiable, the same judge applied the like clear principle, as follows: "Even admitting that evidence of justification could be legally received (of which, however, under the Treaty I have great doubt,) it is not for me to determine what effect it might or might not have upon the mind of a jury on a final hearing or trial for murder. Under the Treaty I am only to determine the question of probable cause. The simple question here to be decided is, whether there is sufficient probable cause to justify his return for trial to the country within whose jurisdiction the crime is charged to have been committed."

In the case of Ternan (Boston Monthly L. R. vol. 26, p. 510) and others for piracy alleged to have been committed in seizing steamer "J. L. Gerrity," in the month of November, 1863, the judges of the Queen's Bench in England, though differing in opinion on the question whether piracy, *jure gentium*, was within the Treaty, did not controvert the same principle laid down by Lord Chief Justice Cockburn: "No doubt, *prima facie*, the act of seizing the vessel, saying at the same time that it is seized for the Confederates, may raise a presumption of such an intention; but then all the circumstances must be looked at to see if the act was really done piratically, *which would be for the jury;* and I cannot say that the magistrate was not justified in committing the prisoner for trial.

And Mr. Justice Crompton observed, "Upon the latter point I quite concur with my Lord because it is not for us to weigh the effect of the evidence which is for the jury; and all we can consider is whether there was enough to justify a committal for trial, and I agree with my Lord that we cannot say that there was not."

It is unnecessary to multiply authorities on a point so clearly defined by the Treaty, but the following observations of Attorney-General Cushing, (opinions of Atty's. General, vol. 4, p. 204 and 211,) in advising the Government of the United States in a case where the prisoner arrested for extradition on a charge of murder desired to prove insanity before the committing magistrate, are so pertinent that they are quoted: "The evidence upon the exhibition of which this (*i. e.* delivery up to justice) is to be done, is such as, according to the laws of the place where the fugitive or person charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed."

Had the treaty conferred upon the magistrate—if it could have been made competent to such an object—the power of *trying* the person charged for an offence committed within a foreign jurisdiction, and of punishing in case of ascertained guilt, the inquiry might have presented itself in a different aspect. But the stipulations under examination aim at no such end, but are confined to the

ascertainment of facts which can weigh nothing in any consequent and purely judicial investigation of the charge."—*Ibid.*, *p.* 211.

These opinions and decisions are, I think, well worthy the attention of this Court, as showing that upon the establishment of a *prima facie* case of guilt, the extradition of the accused should be ordered, leaving him to plead matters of justification before the Court and Jury invested with jurisdiction to try the merits of the offence.

Believing that sufficient notice has been taken of this point, I will will now proceed to show by authority, which cannot be controverted, that the surrender of fugitives from justice is a national obligation. That it is the law and usage of nations, resting on the plainest principles of justice and public utility, to deliver up offenders charged with felony and other high crimes, and fleeing from the country in which the crime was committed, into a foreign and friendly jurisdiction.

In the matter of *Washburn*, (Johnson's Chan. Repts. 4 vol.), arrested in Troy upon a charge of having stolen $350 in Montreal, the Chancellor who was applied to for his discharge, said: When a case of this kind occurs, it becomes the duty of the Magistrate, on due proof of the fact, to commit the fugitive, to the end that a reasonable time may be afforded for the Government here to deliver him up, or for the foreign Government to make the requisite application to the proper authorities here for his surrender. This doctrine is supported equally by reason and authority.

Vattel observes (B. 2, c. 6, s. 76), that to deliver up *one's own subjects* to the offended State, there to receive justice, is pretty generally observed, with respect to great crimes, or such as are equally contrary to the laws and safety of all nations. Assassins, incendiaries, and robbers, he says are seized everywhere, at the desire of the Sovereign in the place where the crime was committed, and delivered up to his justice. The sovereign who refuses to deliver up the guilty, *renders himself, in some measure, an accomplice in the injury, and becomes reponsible for it.* Professor *Martens*, also in his *Summary of the Law of Nations*, p. 107, says, that according to modern custom, a criminal is frequently sent back to the place where the crime was committed, on the request of a power who offers to do the like service, and that we often see instances of this.

Grotius, who is of still higher authority, declares: (B. 2, cap. 21, sec. 3, 4, 5), that the State is accountable for the crimes of its subjects committed abroad, if it affords them protection; and, therefore, the State where the offender resides, or has fled to, ought, upon application and examination of the case, either to punish him according to his demerit, or to deliver him up to the foreign State.

Heineccius, in his commentary on these passages (Prælec. in Grot. h. t.), admits that the surrender of a citizen, who commits a crime in a foreign country, is according to the law of nations; and he says further, that it is to be deduced from the principles of natural law. We ought either to punish the offender ourselves, or deliver him up to the foreign government for punishment. So *Burlamaqui*, (part 4, c. 3, ss. 23 to 29), follows the opinion of Grotius, and maintains that the duty of delivering up fugitives from justice is of common and indispensable obligation.

In the matter of *Washburn* previously referred to, the Chancellor said: "It has been suggested that theft is not a felony of such an atrocious and mischievous nature, as to fall within the usage of nations on this point. But the crimes which belong to the cognizance of the law of nations are not specially defined; and those which strike deeply at the rights of property, and are inconsistent with the safety and harmony of commercial intercourse, come within the mischief to be prevented, and within the necessity, as well as the equity, of the remedy. They are equally invasions of the rights of property, and incompatible with the ends of civil society. Considering the great and constant intercourse between this State and the Provinces of Canada, and the entire facility of passing from one dominion to the other; it would be impossible for the inhabitants on the respective frontiers to live in security, or to maintain a friendly intercourse with each other, if thieves could escape with impunity, merely by crossing the territorial line. The policy of the nation and the good sense of individuals would equally condemn such a dangerous doctrine."

In *Kent's* commentaries, (Vol. 1, p. 36,) *Phillimore*, (Vols. 1 and 2,) *Zabriskie's* New Jersey Reports, (Vol. 3, p. 377,) *Rutherforth*, (B. 2, c. 9, s. 12,) the same doctrines are enunciated as forming part of the law of nations.

Here I will leave this branch of the case, and here I might leave it altogether. Because the pretended belligerency claimed for the prisoners, and boldly set up as a justification of their crimes, involves a question which the reading of the foregoing authorities clearly shows, if it has any existence, (and I deny that it has in the present case,) can only be determined at the time of the trial of the prisoners, and not upon a preliminary investigation of this kind. But, as my learned friends have opened before us the wide field of international law, and defiantly challenged us to enter, I will not shrink from a consideration of the question even from this new and foreign point of view, much as it is, in my opinion, out of place in the present enquiry. Upon this point, the arguments of the learned counsel lead me to suppose that they view the acts of the prisoners at St. Albans in the light of belligerent acts. And

in support of this pretension they have cited, with a show of apparent seriousness, certain writers, to prove that, as what their clients did was, from their point of view, done by virtue of previously acquired belligerent rights, therefore the crimes committed by the prisoners at St. Albans cannot be made the subjects of enquiry before the tribunals of a neutral country. But the learned gentlemen must be reminded, that before they can invoke the operation of international law to justify, excuse, or palliate the outrages of which they are accused, they must have proved the existence of a certain state of facts to which their law can be applied. As, for instance, that their clients were duly commissioned by recognised military authority, to commit the act complained of. That the circumstances under which it was undertaken and executed, exempted them from criminal responsibility, and above all, even supposing that the prisoners were so authorized, that they have not forfeited their belligerent character, by commencing their attack from a neutral and friendly territory.

In the absence of such proof, it is perfectly manifest that their International law can have no application; and for this very good reason, that without it there is nothing of record to which the ingenuity of the most skilful pleader can possibly make the application. I will, therefore, as next in order, examine the evidence, such as it is, submitted by the prisoners upon these points, all of which I undertake to demonstrate they have signally failed to prove.

The defence of the prisoners rests upon the pretended commission produced by Bennett H. Young, which it has been strenuously urged entitles him to the recognition of an officer in the service of the so-called Confederate States. And further, that under this commission, and certain mysterious instructions communicated to him by one C. C. Clay, Young, and his accomplices were fully licensed to commit all kinds of depredations at St. Albans, or elsewhere in the United States.

This being the *modest* pretension of the prisoners' Counsel, we will now see how far it is borne out by reference to the commission itself, which is in these words :—

Lieutenant Young's Commission.

CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT,
Richmond, June 16, 1864,

SIR,—You are hereby informed that the President has appointed you First Lieutenant, under the act 121, approved February 17th, 1864, in the Provisional Army, in the service of the Confederate

States, to rank as such from the 16th day of June, 1864. Should the Senate, *at their next session*, ADVISE and CONSENT THERETO, you will be commissioned accordingly.

Immediately on receipt thereof, please to communicate to this Department, through the Adjutant and Inspector General's Office, your acceptance or non-acceptance of said appointment, and, with your letter of acceptance, return to the Adjutant and Inspector General the oath herewith enclosed, properly filled up, subscribed, and attested, reporting at the same time your age, residence, when appointed, and the State in which you were born.

Should you accept, you will report for duty to

(Signed) JAS. A. SEDDON, Secretary of War.

Lieut. Bennet H. Young &c., &c., P.A.C.S.

This, your Honor, is the document which you are asked to regard as a commission, and to accept as an authority for the perpetration of the crimes committed by the prisoners at St. Albans. A modest request surely, considering that upon the face of this same piece of paper, it appears that a commission will only be given, provided *the Senate at their next session advise and consent thereto.* But there has been no attempt to prove that the Senate ever did advise or consent thereto, nor is there a particle of evidence to show that Young ever communicated his willingness, verbally or in writing, to accept of such appointment, or that he ever took the required oath. To get rid of these difficulties, witnesses have been examined with the view of proving that it was the custom of the Confederacy to issue commissions in this conditional form, to be ratified afterwards when the Senate met. Well, if such a practice had prevailed, it might, perhaps, have answerd the purpose intended. But surely the matter assumes an entirely different aspect when the holder of such a document leaves the limits of the so-called Confederacy, and goes abroad to rob and murder by virtue of such authority. The pretence that this piece of paper is sufficient to justify the crimes committed by the prisoners at St. Albans, is so monstrous as to excite astonishment at its having been urged upon the attention of the Court. Indeed, it is well calculated to induce the belief that we are trifling with our Treaty obligations.

It has, however, been said on behalf of the accused, that Young received instructions subsequent to his pretended commission which supply the authority of the Senate and establish his military *status.* These instructions I will now read word for word as I find them in the evidence.

Confederate States of America,
War Department,
Richmond, Va., June 16th, 1864.

To Lieut. Bennet H. Young,

Lieut.,—You have been appointed temporarily First Lieut. in the Provisional Army for special service. You will proceed without delay by the route already indicated to you, and report to C. C. Clay, jun., for orders. You will collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number that you may deem suitable for that purpose, and execute such enterprises as may be indicated to you. You will take care to organize within the territory of the enemy, to violate none of the neutrality laws, and obey implicitly his instructions. You and your men will receive transportation and customary rations, and clothing or commutation therefor.

JAMES A. SEDDON,
Sec. of War.

Confederate States of America,
War Department.
Richmond, Va., June 16th, 1864.

To Lieut. Bennet H. Young,

Lieut.,—You have been appointed temporarily 1st. Lieut. in the Provisional Army for special service.

You will proceed without delay to the British Provinces, where you will report to *Messrs. Thompson and Clay for instructions.*

You will, under their direction, collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, as you may deem suitable for the purpose, and will execute such enterprises as may be entrusted to you. You will take care to commit no violation of the local law, and to obey implicitly their instructions. You and your men will receive from these gentlemen, transportation, and the customary rations and clothing, or commutation therefor.

JAMES A. SEDDON, *Sec. of War.*

Va., June 16th.

Confederate States of America,
War Department,
Richmond, Va., June 16th, 1864.

Lieut. B. H. Young is hereby authorized to organize for special service a Company, not to exceed twenty in number, from those who belong to the service and are at the time beyond the Confederate States.

They will be entitled to their pay, rations, clothing, and transportation, but no other compensation for any service which they may be called upon to render.

The organisation will be under the control of this Department, and liable to be disbanded at its pleasure, and the members returned to their respective companies.

JAMES A. SEDDON, *Secretary of War.*

Here, your Honor, we have no less than three different sets of instructions, emanating, we are told, from the Confederate Secretary of War, and each of them upon the 16th of June. In the first instructions given, Young is ordered to proceed without delay by the route already indicated to him, and to report to C. C. Clay, Jun., for orders. In the second, the same Bennett H. Young is ordered to proceed without delay to the British Provinces, and there report himself to Messrs. Thompson and Clay for instruction. While in the third set of instructions he is informed, that the organization will be made under the control of the War Department. Now, how are we for the purposes of this enquiry, to reconcile these conflicting orders? Can we seriously believe that Jas. A. Seddon, supposing him to have been a sane man upon the 16th of June last, ever subscribed his name to orders so ridiculously contradictory to each other? For my part, I incline to the belief, that he did not, and for this reason, that I am strongly impressed with the conviction that the pretended commission and instructions have been fabricated to meet the exigency of the prisoners' position. But whether I am right in this conjecture or not matters little, as neither the so-called commission nor its accompanying instructions, convey any authority to the prisoners to engage in acts of murder or robbery. Indeed, so true is this, that we find their Counsel relying for a justification of their crimes, not upon the alleged authority of James A. Seddon, but upon the order of the mysterious C. C. Clay, whom nobody in Canada, except the prisoners and their Counsel, seems to have seen, known, or cared about. Remembering, however, that C. C. Clay, Jun., has figured conspicuously in this investigation; that it is he, whom we are told, planned, authorised, and directed the execution of the St. Albans raid, that it was his command the prisoners obeyed, and stated they were bound to obey, I feel myself called upon to examine his authority to sanction the crimes committed at St. Albans, and to issue military orders from Canada.

Here is his letter to Young:—

PAPER P.

Mem. for Lieut. Bennet Young, C. S. A.

Your report of your doings, under your instructions of 16th June last from the Secretary of War, covering the list of twenty Confederate soldiers who are escaped prisoners, collected and enrolled by you under those instructions, is received.

Your suggestions for a raid upon accessible towns in Vermont, commencing with St. Albans, is approved, and you are authorised and required to act *in conformity with that suggestion.*

October 6, 1864.

C. C. CLAY, JUN.
Commissioner, C. S. A.

Now, I think it may be fairly asked, who is this C. C. Clay, who has arrogated to himself such extraordinary powers in a neutral territory? George N. Sanders, in his evidence, says: I know Mr. C. C. Clay, whose name is subscribed to document P. He was then exercising the authority of a Confederate agent, claiming *full ambassadorial powers, as well civil as military.* I had several conversations with Mr. Clay about the St. Albans raid. He informed me that he directed the raid, and gave the order for it—the St. Albans raid—and Bennett H. Young was instructed by him to carry it out. Mr. Clay told me about the eighth day of December last, a few days before he left, that he would leave such a letter as the paper writing marked P, and which I infer had not been written up to that time. The letter which he said he would write on that occasion was a letter assuming all the responsibility of the St. Albans raid, for which he was responsible.

Now, if we are to believe Sanders, and I know of no reason why we should disbelieve his testimony upon this point, the prisoners had only the verbal authority of C. C. Clay, for their doings at St. Albans, upon the 19th of October. The letter, or memorandum, as it is called, bearing date 6th October last, was undoubtedly written after the prisoners' visit to St. Albans, and in the month of December, a day or two before C. C. Clay withdrew himself from Canada. But this, again, is of little consequence, for it is to be hoped that the assumed authority in Canada of a *soi-disant* Southern rebel agent, will not be permitted to over-ride our own laws, to nullify our treaties, and to imperil our friendly relations with the United States. Besides, Clay, of all others is least entitled at our hands to friendly recognition. It is in evidence, that from the moment he set foot in this Province, he disregarded our neutrality laws, which, so long as he claimed an asylum in Canada, were as binding upon him as upon us. And Clay knew this, as appears by the evidence of Wm. M. Cleary, who says: "The reason why at an earlier stage of this

enquiry I did not produce this paper, ordering Young to proceed to the British Provinces, to report himself to Messrs. Thompson and Clay for instructions, was, that after a consultation I had with the Counsel for the defence, it was decided not to produce it, because it might involve Clay in a breach of the neutrality laws."

Another paper, omitting the words *proceed to the British Provinces*, was, therefore, substituted; a proceeding, which shows the dexterity of the prisoners' friends in manufacturing evidence to meet the requirements of their case. Is it not, however, strange, that Clay, who (according to Mr. Sanders) claims to exercise in Canada full ambassadorial powers, civil as well as military, has not made his appearance at any time during this investigation? Assuredly, if he is clothed, as Sanders tells us, with such high power and authority, his evidence might have been of some importance to the prisoners. At any rate, it would have been interesting to very many, no doubt, to be afforded an opportunity of seeing the first ambassador Canada could ever boast of having within her borders. But the fact is, your Honor, Clay dared not appear. And as a proof of this, we find, that in order to screen his own guilt, and to save himself from punishment, he has fled from Canada, taking with him, if report be true, and I doubt it not, much more than his share of the moneys stolen by the prisoners from the people of St. Albans. And yet, it is the authority of this conspirator against the laws of the United States, against the peace, dignity and welfare of Canada; he, who had not even the courage to stand by his friends and accomplices in their hour of trial, that is set up as a justification of the St. Albans outrages, and for which judicial recognition is demanded from this Court. I believe, however, that your Honor will not sanction such a monstrous proposition for a moment—one utterly abhorrent to every idea of justice, and one which, I hesitate not to say, if entertained by the people of this Province, will, I verily believe, be regarded, and justly so, by the United States as tantamount to a declaration of war against them. I say justly so, Sir, because if you discharge the prisoners, it must be that you regard them as belligerents, and the crimes imputed to them at St. Albans, as so many acts of legitimate warfare. Now, considering the circumstances under which this robbing expedition was planned and executed—that it was concocted in Canada, and started from Canada, and that it has no higher authority to rest upon than the memorandum of C. C. Clay, can we be surprised that our recognition and judicial sanction of such an atrocious outrage should excite the indignation of the people of the United States, and induce them to look upon us as their enemies?

But before I leave this point, let me remind your Honor, that Mr. Davis, the President of the so-called Confederate States, has

not to this hour, acknowledged the acts of the prisoners, or in any way assumed the responsibility of what they did at St. Albans. In support of this statement, I refer to the evidence of the Revd. Stephen F. Cameron, the messenger dispatched to Richmond, to obtain from there a ratification of the prisoners, acts, or such other evidence as would prove that their raid was directed, sanctioned, and authorized by the Confederate government, and that they, the prisoners, were duly commissioned officers and soldiers of the Confederacy. Your Honor will remember how often and how earnestly my learned friends protested against being called upon for the defence of their clients, until they had an opportunity of communication with Richmond. But why this necessity for communicating with Richmond if the pretended commission and written memorandum of C. C. Clay were, at the time of their production by the prisoners, as we are told they were, sufficient to prove their military *status?* The fact is, Sir, my learned friends knew then, as they know now, if they would but make the admission, that the prisoners had no authority whatever to justify their crimes, or to stay the demand for their extradition. And hence their frequent appeals for delay, to communicate with the magistracy at Richmond. Well, that delay was accorded to them, and now that the messenger has returned, let us see what he has brought to aid the cause of the prisoners, I find, Sir, that he has laid before this Court as the result of his perilous journey, three copies of three muster rolls of three Companies, in which the names of the prisoners have been very badly written indeed; and so far back it would seem as two years ago. Now, your Honor, this is not the kind of evidence which the prisoners in their affidavits fyled in support of their application for delay, stated they needed for their defence, and could procure upon communication with Richmond. The truth is, they had hoped that the Confederate President, if appealed to, might be induced to avow their acts. But, although I would not attach the least importance to his avowal, even if it had been made, it is still worthy of remark, that he has withheld it. And the reason, said Mr. Cameron in his evidence, is, " That his General Order in the Burley case had been disregarded by the Judges of Upper Canada. President Davis, observed the witness, seemed *piqued and indignant of the facts.*" This, your Honor is the excuse offered for the reticence of Mr. Davis, for his unwillingness to hold himself or his Government, such as it is, responsible for the outrages committed at St. Albans. Will you then, seeing that the Confederate authorities have pointedly refused to acknowledge the Military *status* claimed for the prisoners, supply the want by the substitution of your sanction for their authority? I earnestly hope you will not place yourself in such an unenviable position, a position which I take the liberty of saying would

be dishonoring to the high character of the judiciary, and extremely prejudicial to the best interests of the people of Canada. With these remarks upon this branch of the question at issue, I will now, in reply to my learned friends, proceed to consider our neutral obligations to the United States, and with the further object of showing that is not only our duty, but our interest, if we wish to secure to ourselves a continuance of the blessings of peace, to observe a strict impartiality in the pending conflict, and not to favor one of the contending parties to the injury of the other.

DUTY OF NEUTRALS.

Chief Justice Jay, in his charge to the Grand Jury, in the case of Wenfield, (*Reported in Wharton's Rept. of State Trials in U. S.*) accused of a violation of the neutrality laws of the United States, made the following sensible remarks, which I quote, as being in my opinion precisely applicable to our state at this moment. That eminent Judge said:—"By the laws of nations, the United States, as a neutral power, are bound to observe the line of conduct indicated by the proclamation of the President towards all the belligerent powers, and that although we may have no treaties with them. Surely (said he) no engagements can be more wise and virtuous than those whose direct object is to maintain peace and to preserve large portions of the human race from the complicated evils incident to war. While the people of other nations do no violence or injustice to our citizens, it would certainly be criminal and wicked in our citizens, for the sake of plunder, to do violence and injustice to any of them.

If you let loose the reins of your subjects, against foreign nations, these will behave in the same manner to you, and instead of that friendly intercourse which nature has established between all men, we should see nothing but one nation robbing another. The respect which every nation owes to itself imposes a duty on its Government, to cause all its laws to be respected and obeyed, and that not only by its proper citizens, but also by those strangers who may visit and occasionally reside within its territories. There is no principle better established than that all strangers admitted into a country are, during their residence, subject to the laws of it; hence it follows that the subjects of belligerent powers are bound, while in the country, to respect the neutrality of it."

Did Clay do this? Did the prisoners do it? St. Albans answers no, and well it may so answer.

"While" said the learned Judge, "we contemplate with anxiety and regret the desolation and distress which a war so general (war was then being carried on between Austria, Prussia, Sardinia, Great Britain and the United Netherlands of the one part, and

France of the other) and so inflamed will probably spread over more than one country, let us with becoming gratitude wisely estimate and cherish the peace, liberty, and safety with which the Divine Providence has been pleased so liberally to bless us. Self-preservation is a primary duty of a state as well as of an individual. To love and to deserve an honest fame, is another duty of a state as well as of a man. To a state as well as to a man, reputation is a valuable and an agreeable possession. But with war and rumors of war, our ears, in this imperfect state of things, are still assailed.

"Into this unnatural state ought a nation to suffer herself to be drawn without her own act, or the act of him, or them, to whom for the purpose she has delegated her power?"

"Into this unnatural state should a nation suffer herself to be drawn by the unauthorized, nay, by the unlicensed conduct of her citizens?"

"Humanity and reason, says *Vattel*, say no."

In the case of Talbot *vs.* Janson, for a breach of neutrality law, (1 *Curtis' Repts.* of Decision in the Sup. C. of the U. S., p. 134,) Judge Patterson said:—"The United States are neutral in the present war; they take no part in it; remain common friends to all the belligerent powers, not favoring the arms of one to the detriment of the others. An exact impartiality must mark their conduct towards the parties at war, for if they favor, they favor one to the injury of the other. It would be a departure from pacific principles, and indicative of a hostile disposition. It would be a fraudulent neutrality." At (p. 136) he says:—"The principle deducible from the law of nations is plain; *you shall not make use of our neutral arm to capture vessels of* YOUR *enemies, but of* OUR *friends. If you do, and bring the captured vessels within our jurisdiction, restitution will be awarded.* Both the powers in the present instance, though enemies to each other, are friends of the United States, whose citizens ought to preserve a neutral attitude, and should not assist either party in their hostile operation."

Phillimore (V. 1, 2, p. 189) says: "A Rebellion or a civil commotion, it may happen, agitates a nation; while the authorities are engaged in repressing it, bands of rebels pass the frontier, shelter themselves under the protection of the coterminous State, and from thence, with restored strength and fresh appliances, renew their invasions from the State in which they have escaped. The invaded States remonstrate. The remonstrance, whether from favor to the rebels, or feebleness of the executive, is unheeded, or at least, the evil complained of, remains unredressed.

In this state of things, the invaded State is warranted by international *law in crossing the frontier*, and in taking *the necessary means for her safety, whether these be the capture or dispersion of*

the rebels, or the destruction of their stronghold, as the exigencies of the case may fairly require.

In (3rd *Phillimore*, p. 89,) it is laid down, that the conduct of a State which allowed, through indifference or gross remissness, its subjects to invade the rights of another State, would fall under what is classed as *culpable imprudence.* If indeed the State permitted, or connived at the offence, and sheltered the offender, it would be just as much an aggressor, as if the invasion had been made by the regular forces of the kingdom. But when the individuals of any State violate this general law, it is then the interest, as well as the duty of the Government under which they live, to animadvert upon them with a becoming severity, that the peace of the world may be maintained. For in vain would nations, in their collective capacity, observe these universal rules, if private subjects were at liberty to break them at their own discretion, and involve the two States in war. It is, therefore, incumbent upon the nation injured, first, to demand satisfaction and justice to be done on the offender by the State to which he belongs; and, if that is refused or neglected, the Sovereign then avows himself an accomplice or abettor of his subjects' crimes, and draws upon his community the calamities of foreign war.

Wheaton, (p. 716,) says: The respect due to neutral territorial seas is not confined to a total abstinence, from every act of hostility; it equally extends to the proceedings immediately preparatory to those acts. Thus a fleet or vessel of war, or privateer, cannot, without committing a violation of territory, establish itself upon any point of this sea, in order to watch the passage of vessels, whether of war or merchantmen of the enemy or neutral ships, even if it leaves its retreat, in order to attack them outside of the limits of the neutral jurisdiction. Without doubt, hostilities, the employment of force, the exercise of the right of war, have no place within the jurisdictional limits of pacific Sovereigns friendly to the two parties, *but the law of war does not admit that the territory of a neutral people should serve as an ambuscade for one of the belligerents to favor his operations of the war to the detriment of the other.* All the prizes made under such circumstances are then unlawful, and give to the neutral the right of claiming from the belligerent, who does these acts, a reparation, as if they had been committed on his own proper territory, and within the limits of his jurisdiction.

In consequence of the laying in wait at Southampton, by an American steamer of war, watching for the departure of a Confederate armed steamer, and sending men on shore for that purpose, Earl Russell wrote January the 10th, 1862, to Mr. Adams, "I think it necessary to state to you, that, except in case of stress

of weather forcing them to land, Her Majesty's Government *cannot permit armed men in the service of a foreign Government to land upon British Territory*. (*Ibid.*, page 721.) There is then no exception to the rule, that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful. "When the fact is established," says *Sir W. Scott*, it overrules every other consideration. A capture made under such circumstances, is done away; the property must be restored, notwithstanding that it may actually belong to the enemy. (*Ibid.*, page 727.) It is a settled principle of the law of nations, that no belligerent can rightfully make use of the territory of a neutral State for belligerent purposes, without the consent of the neutral Government."

Vattel (B. 3, c. 7, p. 344,) says: It is certain that if my neighbor affords a retreat to my enemies, when defeated and too much weakened to escape me, and allows them to recover, and watch a favorable opportunity of making a second attack on my territories, this conduct, so prejudicial to my safety and interests, would be incompatible with neutrality. If therefore, my enemies, on suffering a discomfiture, retreat into his country, although charity will not allow him to refuse them permission to pass in security, he is bound to make them continue their march beyond his frontiers as soon as possible, and not suffer them to remain in his territories to watch for a convenient opportunity to attack me anew: otherwise he gives me a right to enter his country in pursuit of them. Such treatment is often experienced by nations that are unable to command respect. Their territories soon become the theatre of war; armies march, encamp and fight in it, as in a country open to all comers.

Vattel (B. 2, c. 6, p. 161,) says: But, if a nation or its chief approves and ratifies the act of the individual, it then becomes a public concern; and the injured party is to consider the nation as the real *author* of the injury of which the citizen was perhaps only the *instrument*.

If the offended State has in her power the individual who has done the injury, she may, without scruple, bring him to justice and punish him. If he has escaped and returned to his own country, she ought to apply to his sovereign to have justice done in the case. And since the latter ought not to suffer his subjects to molest the subjects of other States, or to do them an injury, much less to give open audacious offence to foreign powers, he ought to compel the transgressor to make reparation for the damage or injury, if possible, or to inflict on him an exemplary punishment, *or finally, according to the nature and the circumstances of the case, to deliver him up to the offended State, to be there brought to justice.*

Assassins, incendiaries and robbers are seized everywhere, at the desire of the sovereign in whose territories the crime was committed, and are delivered up to his justice.

The Sovereign who refuses to cause reparation to be made for the damage done by his subject, or to punish the offender, or finally, to deliver him up, renders himself in some measure an accomplice in the injury, and becomes responsible for it. But if he delivers up either the property of the offender, as an indemnification, in cases that will admit of pecuniary compensation, *or his person, in order that he* may suffer the punishment due to his crime, the offended party has no further demand on him."

In support of the doctrines and opinions thus enunciated, many other eminent writers and authors could be quoted. But I conceive that I have gone far enough in this direction, and have adduced sufficient authority to refute the mistaken opinions entertained by our opponents of the obligations imposed upon us by the laws of neutrality.

I now call your Honor's attention to the case of Bennett G. Burley, lately extradited upon the demand of the United States. This person was arrested upon a charge of robbing one Ashley, on board the Philo Parsons, a steamer sailing at the time on Lake Erie. The prisoner when ordered to render an account of his conduct before the Recorder of the City of Toronto, set up as a justification of the act, that he, Burley, was a commissioned officer in the service of the so called Confederate States, that he was entitled to be regarded as a belligerent, and that his object in taking forcible possession of the Philo Parsons, which he and others did, in addition to the robbery of Ashley, was to use her as a means to enable his party to effect the release of Southern prisoners detained in Camp Douglas, on Johnson's Island. The Recorder held that the act of robbery was not justified, and ordered extradition. A writ of *Habeas Corpus* was next applied for by the prisoner's counsel. The application was made to Chief Justice Draper, who had sitting with him three other Judges. It was very ably argued and very ably opposed by the counsel engaged on both sides, and after a patient and careful consideration of the facts and the law applicable to them, the writ of *Habeas Corpus* was, by these learned Judges, refused. Be it remembered, too, that in this case the prisoner produced an order or proclamation from the Confederate President avowing the act of Burley, and assuming all the responsibility. But the Judges held, and held rightly, that no such order or proclamation could justify the circumstances under which the crime was committed, commencing with the violation of our neutrality laws; and that if the authority upon which the prisoner relied, was of any value, the proper time and place to urge it as matter of justification, was at his trial, and before the Court having jurisdiction to hear and determine upon the merits of the offence charged. There is then this difference between the case of Burley

and that of the prisoners now before this Court, that Mr. Davis avowed Burley's deed, and refused to give a like recognition to the acts of Bennett H. Young and his accomplices. But then the soundness, the legality of this judgment have been questioned by my learned friends on the other side. Indeed one of them has carried his criticism to the extreme length of saying, that the judgment is a disgrace to the judiciary of Upper Canada, and is a proof of the unfitness of the Judges in that section of the country, to deal with questions of international law!! Perhaps this is the opinion of the gentleman who has denounced in such strong vituperative terms the Chief Justice and his brother Judges. But certainly it is not the opinion of the eminent writers upon international law, from whose pages I have read, nor will it, I trust, be the opinion of your Honor. I admit, however, that the learned Judges whose judgment has provoked so much wrath, committed an unpardonable error in adjudging Burley's case, without consulting my learned friends, whom I am sure would have felt great pleasure in indoctrinating their Honors with ideas of international law as understood by Jeff. Davis, and practised by raiders generally. Believing, however, that the Bench of Upper Canada will not be deterred from pursuing the path of rectitude, by the belligerent observations of my learned friend, and that it is quite possible he might be induced to look upon them with more favor, if he heard the reasons of their judgment once more, I will now read a few extracts from the published report of their decision, which, notwithstanding all that has been said to the contrary, I still persist in commending to the careful attention of the prisoner's counsel.

"But," said *Chief Justice Draper*, "conceding that there is evidence that the prisoner was an officer in the Confederate service, and that he had the sanction of those who employed him to endeavor to capture the *Michigan*, and to release the prisoners on Johnson's Island, the manifesto put forward as a shield to protect the prisoner from personal responsibility does not extend to what he has actually done—nay more, it absolutely prohibits a violation of neutral territory or of any rights of neutrals. The prisoner, however, who according to the testimony, was a leader in an expedition, embarked surreptitiously from a neutral territory. His followers, with their weapons, found him within that territory, and proceeded thence to prosecute their enterprise, whatever it was, into the territory of the United States. Thus, assuming their intentions to have been what was professed, they deprived the expedition of the character of lawful hostility, and the very commencement and embarkation of their enterprise was a violation of neutral territory, and contrary to the letter and the spirit of the manifesto produced. This gives a greater reason for carefully enquiring whether, looking

at the whole case, the alleged belligerent enterprise was not put forward as a pretext to cloak very different designs. Taken by themselves, the acts of the prisoner himself clearly establish a *prima facie* case of robbery with violence—at least according to our law. The matters alleged to deprive the prisoner's acts of this criminal character are necessarily to be set up by way of defence to the charge, and involve the admission that the prisoner committed the acts, but denying their criminality. Assuming some act done within our jurisdiction, which, unexplained, would amount to robbery; if explanations were offered, and evidence to support them were given at a preliminary investigation, the accused could not be discharged—the case must be submitted to a jury. This case cannot, from its very nature, be investigated before our tribunals, for the act was committed within the jurisdiction of the United States. Whether those facts are necessary to rebut the *prima facie* case can be proved, can only be determined by the courts of that country. We are bound to assume that they will try and decide it justly.

I do not, on the whole, think the prisoner is entitled to be discharged.

I should add, that, considering the nature of the questions to be determined, I requested the learned Chief Justice of the Common Pleas, and my brothers Hagarty and John Wilson, who were all, at the moment, within reach, to sit with me and aid me with their opinion. I am sustained by their concurrence in the conclusion at which I have arrived."

Chief Justice *Richards*—"Taking the evidence adduced against the prisoner, there seems to have been sufficient to warrant his committal. Then, has he shown sufficient to relieve him of the charge?

"If, on a similar matter occurring in this country, I was called upon to decide whether I would discharge the prisoner or commit him for trial, I should feel bound to commit him. I should say, that looking at all the facts as they are presented on either side, the conduct of those parties, and what they said and did during the time the vessel was in their possession, was of that equivocal character, that it would, in the most favorable view suggested for the prisoner, be a matter for the consideration of a jury, whether they were acting in good faith in carrying out a belligerent enterprise, or whether they were not making an expedition for the purpose of plunder, under pretence of a belligerent enterprise, thinking in that way more readily to escape detection.

"Entertaining the opinion I have expressed, it is my duty to declare that the learned Recorder was warranted in deciding to commit the prisoner for the purpose of being surrendered. As

long as the Extradition Treaty between this country and the United States is in force, it ought to be honestly carried out, and in all cases where the evidence shows that an offence had been committed, though there may be conflicting evidence as to the facts, or different conclusions drawn from the facts, yet in those cases where we would commit for trial, in similar cases in this country, we are equally bound to commit to be surrendered for trial under the Treaty, and our Statute passed to carry it out. We must assume that parties will have a fair trial after their surrender, or we ought not to deliver them up at all, or to have agreed to do so."

Justice *Hagarty*—"I think the only just course open to a Canadian Court is to decline accepting either the prisoner's statement or his alleged employer's avowal of his acts, as conclusive evidence of the proposition that his conduct was war and not robbery. It should accept the evidence offered as establishing a *prima facie* case of guilt sufficient to place the prisoner on his trial, and all for his defence. The whole burden of proving that the transferring of the money from Ashley's pocket to that of the prisoner and his friend, does not bear the complexion that men of plain understanding must, under the circumstances, attribute to it, must be thrown upon the prisoner.

I think I am bound to a treaty so made between my Sovereign and her ally in a liberal and just spirit, not laboring with eager astuteness to find flaws or doubtful meanings in its words, or in those of the legal forms required for carrying it into effect.

We are to regard its avowed object,—the allowing of each country to bring to trial all prisoners charged with the expressed offences. Neither of the parties can properly have any desire to prevent such trial, or to shield a possible offender. If the position of the case were reversed, and the prisoner had done the acts complained of in this country, and claimed to be a belligerent against our Sovereign, I think any Canadian judge or magistrate would commit him for trial for robbery, leaving him to plead his belligerent position at his trial for what it was worth. I have neither the desire nor the right to assume that he will not be fairly tried in the United States. The Treaty is based on the assumption that each country should be trusted with the trial of offences committed within its jurisdiction. I think the prisoner should be remanded on the Recorder's warrant, which I think is not open to any valid objection. Had I differed from the result arrived at by the Recorder, I should then have to consider a doubt more than once expressed, whether any judge can review his decision."

(After reciting the facts, Mr. Justice *Wilson* proceeds:)

"These proceedings, so mean in their inception and so ignoble

in their development and termination, we are asked to consider as acts of war, and to accord to the prisoner belligerent rights. What is there in all this which constitutes the act of war? If the object were to release the prisoners, from all that appears, they never were nearer than fourteen miles to Johnson's Island. Was the seizure of this unarmed boat *per se* an act of war?—for it has been argued that the robbery was merged in the higher act. The seizure of the boat, for whatever purpose, was one thing, the robbery of Ashley quite another; and in no way that we see, in furtherance of the design now insisted upon necessary for its accomplishment. But is not the *bona fide* of the enterprise matters of defence which a jury ought to try? Such a trial can only be had where the offence was committed, and we cannot doubt but that justice will be fairly administered. Then we are told that although the prisoner has no orders to show, authorizing what he did, he has the manifesto of the President of the Confederate States avowing the act and assuming it, and therefore he is not subject to this charge at all. We accord to that Confederacy the rights of a belligerent, as the United States has done from the day it treated the soldiers of the revolted States as prisoners of war; but there is an obvious distinction between an order to do a belligerent act, and the recognition and avowal of such an act after it has been done. The one is an act of war, the other an act of established government. The one is consistent with what Great Britain acknowledges, the other is not. For us judicially to give effect to the avowal and adoption of this act, would be to recognize the existence of the nationality of the Confederate States, which, at present, our Government refuses to acknowledge.

Giving for the moment this manifesto its full force, it distinctly disclaims all breaches of neutrality: but it is clear that this expedition took its departure and shipped its arms from our port. But does it assume the responsibility of this seizure, and all that was done upon it throughout? If not, it is neither justification nor excuse. I see no authority for the doing of the act, and as an assumption of what was done, therefore, the whole justification fails. Lastly, the attitude of the United States towards us is no concern of ours. Sitting here, whatever they do, while peace exists, and this Treaty is in force, we are bound to give it effect. We can look with no favor on treachery and fraud; we cannot countenance warfare to be carried on except on the principles of modern civilization. We must not permit, with the sanction of law, our neutral rights to be invaded, our territory made the base of warlike operations or the refuge from flagrant crimes. Peace is the rule, war the exception of modern times; equivocal acts must be taken most strongly against those who, under pretence of war, commit them. For these

reasons, I think the prisoner must be remanded on the warrant of the learned Recorder."

And for the same reasons so also should the prisoners here be remanded, unless it can be made to appear that we have one set of neutrality laws for Upper Canada, and another and a totally distinct set for Lower Canada. But as this is not pretended, the judgment in the Burley case disposes of the question at issue here, unless indeed your Honor, like the prisoners' counsel, should be of opinion that your brother Judges,— distinguished as they undoubtedly are for judicial attainments of the highest character,—have in the Burley matter misunderstood the law, misapplied the facts, and evidenced gross ignorance of our international relations, a conclusion which assuredly does not flow from the premises.

With these remarks on the Burley case, I will now address myself to another point raised by the prisoners' counsel, which I undertake to refute by incontrovertible authority, namely, that the prisoners being citizens of the Southern States, had, by the laws of war, a right to regard the citizens of the Northern States, with whom they are at war, as their enemies, and as such to put them to death, wherever or whenever they could, and that for this purpose they have a right to employ all sorts of means. "A strange maxim!" (*Vattel*, B. 3, c. 8, p. 357,) "but happily exploded by the bare ideas of honor, confused and indefinite as they are. In civil society, I have a right to punish a slanderer—to cause my property to be restored by him who unjustly detains it; but shall the means be indifferent? Nations may do themselves justice, sword in hand, when otherwise refused to them; shall it be indifferent to human society that they employ odious means. (*Ibid.*, B. 3, c. 8, p. 351.) Women, children, feeble old men, sick persons, come under the description of enemies, and we have certain rights over them, inasmuch as they belong to the nation with whom we are at war. But these are enemies who make no resistance, and consequently we have no right to maltreat their persons or use any violence against them, much less to take away their lives. This is so plain a maxim of justice and humanity, that at present every nation in the least degree civilized acquiesces in it. The like may be said of the public ministers of religion, of men of letters, and other persons who live remote from military affairs. (Was not St. Albans remote from military affairs?) At present war is carried on by regular troops; the people, the peasants, the citizens take no part in it, and generally have nothing to fear from the sword of the enemy. (*Ibid.*, p. 359). I give, then, the name of *assassination* to a treacherous murder, whether the perpetrators of the deed be subjects of the party whom we cause to be assassinated—or of our own Sovereign. Assassination and poisoning are, therefore, con-

trary to the laws of war, and equally condemned by the law of nature and the consent of all civilized nations. (*Ibid.*, pp. 361, 362.) I cannot conclude this subject of what we have a right to do against the person of the enemy, without speaking a few words concerning the dispositions we ought to preserve towards him. Let us never forget that our enemies are men; though reduced to the disagreeable necessity of prosecuting our rights by force of arms, let us not divest ourselves of that charity which connects us with all mankind. Thus shall we defend our country's rights without violating those of human nature. Let our valor preserve itself from every stain of cruelty, and the lustre of victory will not be tarnished by inhuman and brutal actions. (*Ibid.*, p. 368.) What we have advanced is sufficient to give an idea of the moderation which we ought to observe, even in the most just war, in exerting our right to pillage and ravage the enemy's country."

"Except the single case in which there is question of punishing an enemy, the whole is reducible to this general rule. *All damage done to the enemy unnecessarily, every act of hostility which does not tend to procure victory and bring war to a conclusion, is a licentiousness condemned by the law of nature.* (*Ibid.*, p. 369.) The pillage and destruction of towns, &c., are measures odious and detestable on every occasion when they are put in practice without absolute necessity, or at least very cogent reasons. But as the perpetrators of such outrageous deeds might attempt to palliate them under pretext of deservedly punishing the enemy, be it here observed, that the natural and voluntary law of nations does not allow us to inflict such punishments, except for enormous offences against the laws of nations."

"Soldiers, says *Vattel* (B. 3, c. 15, p. 400), "can undertake nothing without the express or tacit command of their officers. They are not to act at their own discretion. Wherefore, with respect to things which are not entrusted to their charge, they (soldiers and officers) may both be considered as private individuals, who are not to undertake anything without orders. The obligation of the military is even more strict, as the martial law expressly forbids acting without orders; and this discipline is so necessary that it scarcely leaves any room for doubt."

These citations, I think it will be admitted, do not bear out my learned friend's ideas of carrying on war. We will now see what Wheaton says upon this subject (*Wheaton*, p. 7.) "Thus, for instance, on mere general principles, it is lawful to destroy your enemy; and mere general principles make no great difference as to the manner by which that is to be effected; but the conventional laws of mankind, which is evidenced in their practice, does make a distinction, and allows some, and prohibits other modes of de-

struction; and a belligerent is bound to confine himself to those modes which the common practice of mankind has employed, and to relinquish those which the same practice has not brought within the ordinary exercise of war, however sanctioned by its principles and purposes. (*Ibid.*, p. 588.) No use of force is *lawful*, except so far as it is necessary. A belligerent has therefore no right to take away the lives of those subjects of the enemy whom he can subdue by other means. Those who are actually in arms, and who continue to resist, may be lawfully killed; but the inhabitants of the enemy's country who are not in arms may not be slain, because their destruction is not necessary for obtaining the just ends of the war. [Was the assassination of Morison at St. Albans by the prisoners necessary for this purpose?] (Wheaton, pp. 591 to 604.) All the members of the enemy's State may lawfully be treated as enemies in a public war; but it does not, therefore, follow that all these enemies may be lawfully treated alike. No use of force against an enemy is lawful unless it is necessary to accomplish the purposes of the war. The persons of the Sovereign and his family, the members of the civil government, women and children, cultivators of the earth, artizans, laborers, merchants, men of science and letters, and generally all other public or private individuals engaged in the ordinary civil pursuits of life, are, by the custom of civilized nations, founded upon the foregoing principle, exempted from the direct effect of military operations, unless actually taken in arms, or guilty of some misconduct in violation of the usages of war, by which they forfeit their immunity. Private property on land is also exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field (*Ibid.*, p. 626). The effect of a state of war lawfully declared to exist is to place all the subjects of each belligerent power in a state of mutual hostility. But the usage of nations has modified this maxim, *by legalizing such acts of hostility only as are committed by those who are authorized by the express or implied command of the state.* Such are the regularly commissioned naval and military forces of the nation. The horrors of war would indeed be greatly aggravated if every individual of the belligerent states was allowed to plunder and slay indiscriminately the enemy's subjects, without being in any manner accountable for his conduct. Hence it is that in land wars irregular bands of marauders are liable to be treated as lawless banditti, not entitled to the protection of the mitigated usages of war as practised by civilized nations."

"War (3 Phillimore, p. 100,) is not to be considered as an indulgence of blind passions, but as an act of deliberate reason; and as Lord Bacon says, '*no massacre* or confusion, but the highest trial

of right.' Wanton cruelty exercised towards the enemy's subjects is therefore, according to the principles and practice of Christian nations, unjustifiable and illegal. (*Ibid.*, p. 103.) Reason, morality and religion alike commend to the understanding and the conscience of nations, that cardinal principle of the law of war, to which reference has already been made, and by which it is decided, 'that every thing is *not* lawful against an enemy,' but only those things which are essential to the vigorous prosecution and speedy termination of the war. The conqueror (*Ib.*, p. 145) is obliged by the laws of just war, to spare those who lay down their arms, or who are helpless. To put such to death is to commit murder. *And those who commit it, ought to die by the hand of the hangman, and not of the soldier.* Bands of marauders acting without the authority of the Sovereign or the order of the Military commander, have no claim to the treatment of prisoners of war."

The same doctrine is maintained by every modern writer upon the laws of civilized warfare. In the case of *Talbot vs. Janson*, decided in the Supreme Court of the United States, and reported in 1 *Curtis*, p. 139, the principle, supported by the authorities I have just quoted, is well and clearly laid down in a judgment rendered by that high tribunal, from which I take the following extract: "That by a due consideration of the law of nations, whatever opinions might have prevailed formerly to the contrary, no hostilities of any kind except in necessary self-defence, can lawfully be practised by one individual of a nation, against an individual of any other nation at enmity with it, but in virtue of some public authority. War is instituted for national purposes, and directed to national objects; and each individual on both sides is engaged in it as a member of the society to which he belongs, not from motives of personal malignity and ill-will. *He is not to fly like a tiger upon his prey, the moment he sees an individual of his enemy before him.* Such savage notions I believe obtained formerly—thank God more rational ones have succeeded. Even in the case of one enemy against another enemy, therefore, there is no color of justification for any offensive hostile act, unless it be authorized by some act of the Government giving the public constitutional sanction to it."

In the case of Little *vs.* Barreme, also decided in the Supreme Court of the United States (1, *Curtis*, p. 465), Chief Justice *Marshall*, admitted by my learned friends to be a high authority, held that instructions from the President to the commander of a public armed vessel of the United States, to do an illegal act, do not justify the officer in doing it, nor so far excuse him as to exempt him from paying damages. In rendering judgment, Chief Justice Marshall said: "I confess the first bias of my mind was very strong in favor of the opinion that though the instructions of

the Executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers; and between proceedings in the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which indeed is indispensably necessary to every military system, appeared to me strongly to imply the principle that those orders, if not to do a *prohibited act*, ought to justify the person whose general duty it is to obey them, and who is placed by the laws of his country in a situation which in general requires that he should obey them. I was strongly inclined to think, that where, in consequence of orders from the legitimate authority, a vessel is seized with the pure intention, the claim of the injured party for damages would be against that Government from which the orders proceeded, and would be a proper subject for negociation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is, that *the instructions cannot change the nature of the transaction, or legalize an act, which, without those instructions, would have been a plain trespass.*"

These authorities I confidently submit to your Honor's judgment, and in refutation of the absurd and happily exploded maxim, that every injury inflicted by one enemy against the person of another enemy in time of war, and under pretence of war, is justifiable.

The next case to which I shall refer is that of McLeod, so much relied on by my learned friends, and with it I intend to close my observations upon this branch of the case.

McLeod, it is well known, was arrested in the State of New York, in the month of November, in the year 1840, because of his supposed participation in the destruction of the steamer *Caroline*, and the killing of one Durfee. Now, the circumstances under which these acts were committed were very different indeed from those which we are investigating. Between the burning of the *Caroline*, the killing of Durfee, and the robbery of Breck, and of the banks, the murder of Morrison, and the wounding of several other persons at St. Albans by the prisoners, upon the 19th day of October last, there is not the least analogy, absolutely none whatever. The destruction of the *Caroline* was an act of public force, done by the command of the British Government, and all that McLeod did in it, if anything, he did by the express command of his superior officer, and in compliance with the order of his own Government.

The *Caroline* was destroyed in December, 1837, and from the published accounts of the transaction, we gather, that after the rebellion which, during that year had broken out, had been suppressed, a small band of Canadian refugees, who had taken shelter in

the State of New York, formed a league with a number of other evil disposed persons, for the purpose of invading the British territory, not to join a party engaged in civil war,—because civil war at that time in Canada there was none,—but in order to commit within British territory the crimes of robbery, arson, and murder. After some days' preparation, these people proceeded to invade and occupy Navy Island, and part of the British territory; and having engaged the steamboat *Caroline*, which, for their special service was cut out of the ice in which she had been enclosed in the port of Buffalo, they had used her for the purpose of bringing over to Navy Island, from the United States territory, men, arms, ammunition, stores and provisions. In consequence of these preparations, the British authorities stationed a military force at Chippewa, to repel the threatened invasion, and to defend Her Majesty's territory. The commander of that fort, seeing that the *Caroline* was used as a means *of supply and reinforcement* for the invaders, who had occupied Navy Island, judged that the capture and destruction of that vessel would prevent supplies and reinforcements from passing over to the Island, and would, moreover, deprive the force on the Island of the means of passing over to the British territory on the mainland. Accordingly, on the 29th of December, 1837, an expedition of seven small boats, and sixty-three armed men, was fitted out at Chippewa, by the direction of Col. McNab, (who was lawfully in command of Her Majesty's forces at the last named place, and vested with full authority to do so,) and commanded to take the said steamboat by force, wherever found, and to bring her in or destroy her. By this expedition, in which McLeod was engaged, the *Caroline* was captured and destroyed, and in that capture Durfee lost his life. Hence the subsequent arrest of McLeod. No sooner, however, was this arrest made known, than his immediate liberation was demanded by the British Government. The grounds, said Mr. Fox, (the then British Minister,) addressing himself to Mr. Webster, "upon which the British Government make this demand, are these: that the transaction, on account of which McLeod has been arrested, and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by Her Majesty's Colonial authorities, to take any steps, and to do any acts, which might be necessary for the defence of Her Majesty's territories, and for the protection of Her Majesty's subjects; and that consequently those subjects of Her Majesty who engaged in that transaction, were performing an act of public duty, for which they cannot be made personally and individually answerable to the laws and tribunals of any foreign country."

To this demand, *Mr. Webster* replied in these words:—"The Government of the United States entertains no doubt that, after

this avowal of the transaction, as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principles of public law, and the general usage of civilized states, to be holden personally responsible in the ordinary tribunals of law, for their participation in it; and the President presumes that it can hardly be necessary to say that the American people, not distrustful of their ability to redress public wrongs, by public means, cannot desire the punishment of individuals, when the act complained of is declared to have been an act of the Government itself."

After this correspondence, an application was made for the release of McLeod, supported by the law officers of the Government of the United States; but, Judge Cowen, to whom it was made, refused it, upon the ground, that the avowal of McLeod's act by the British Government, did not, and could not, legalize that which according to his views was a crime, before its avowal. He held, moreover, that an indictment for murder having been returned against McLeod, the Court could not by the recognition of the British Government of his (McLeod's) deeds, be ousted of its jurisdiction to try the offence. McLeod was therefore brought to trial, and, after a full hearing of the case, acquitted. Subsequently the opinion of Judge Cowen was reviewed by Judge Tallmadge, (26, *Wendell*, p. 663,) who held that as the British Government had not only approved, but ordered the destruction of the Caroline, during which Durfee was killed, McLeod was not individually answerable for the consequences resulting therefrom. From the moment that it was sanctioned and avowed by England, it became a national question, and one to be determined, not in the ordinary municipal tribunals of the States; but in the high political Courts of Washington and St. James.

Where then is the analogy between this case and that of Young and his accomplices? McLeod, in obedience to the command of his superior officer, performed a soldierly act, one which was deemed necessary for the defence of his country, and which was approved by his Sovereign; whereas Young and his associates, without any authority, performed the very contrary of a military act — one which no man with any regard for truth can pretend was justified by the laws of self-defence or self-preservation. McLeod aided in the destruction of a steamer, employed in carrying aid to the invaders of his country; Young and his party devoted themselves to the robbery and murder of private citizens. And yet we are told that there is great analogy between both acts—the capture of the *Caroline*, and the raid at St. Albans. If there is, I am compelled to say, I do not see the resemblance.

So far your Honor will have perceived that I have argued the

case with no more than a passing reference to the speeches made by my learned opponents—and the reason is that, in my opinion, they have little or no application to the statement of facts before us. Mr. Laflamme, it is true, stated in his address of yesterday, that two new and important facts were brought to light since your Honor's illness—the first was the despatch of Earl Russell, in answer to Mr. Adams, touching the discharge of the persons who rose upon the officers and crew of the Roanoke, and destroyed that vessel. Well, my answer to this new discovery is this:—that in the case of the *Roanoke*, there was, to commence with, no judicial investigation. Secondly:—That Earl Russell stated in reply to Mr. Adams, that there was not sufficient evidence to detain the persons complained of; and lastly, that the commander of the party was duly commissioned and entitled to the recognition of a belligerent. Besides, his act was not one having for its object private pillage. In addition to which, I must remind the gentleman that there is a wide distinction made between maritime warfare and war upon land—between the taking of private property at sea, and the taking of it on land. The sea being the common highway of the world, belligerents, when they there engage each other, have equal rights and privileges. *Wheaton*, (p. 626,) speaking of maritime warfare, says:—"The progress of civilization has slowly but constantly tended to soften the extreme severity of the operations of war by land; but it still remains unrelaxed in respect to maritime warfare, in which the private property of the enemy taken at sea or afloat in port, is indiscriminately liable to capture and confiscation. This inequality in the operation of the laws of war, by land and by sea, has been justified by alleging the usage of considering private property, when captured in cities taken by storm as booty. Whereas, the object of maritime wars is the destruction of the enemy's commerce and navigation, the sources and sinews of his naval power, which object can only be attained by the capture and confiscation of private property.

The second new fact, brought to light by the learned Counsel (Mr. Laflamme), amounts simply to this:—That the prisoners had no criminal intent in all that they did at St. Albans. Now, of all the absurd and preposterous propositions set up by the prisoners' advocates, none, surely, for reckless assertion, approaches to this last one. No *animus furandi!* Pray what object had the prisoners in going to St. Albans? Was it not to steal? Shall it be said, or can it be believed, that when they robbed Breck they did not intend doing so? Can it be reasonably pretended, that when they stole from the banks $220,000, that they did not mean to do that either? Shall it be said, that when they set to work to steal horses, as they actually did, to enable them the more readily to es-

cape with their plunder, that they did not know what they were about? Can it be believed that when Young and his party murdered Morrison, shot Huntingdon, and wounded several other citizens of St. Albans, they had no criminal intent? Truly, it is painful to be obliged to listen to, and to answer such unfounded arguments; but the real fact is (and it is not a new one), that it would seem as if we met here to waste time, and, as I have before stated, to trifle with, instead of honestly to fulfil, our Treaty engagements. Young and his accomplices had no criminal intent in their St. Albans operations! If this be true, why is it that up to this hour they have not made restitution? What have they done with the stolen money? If they are the honest, upright men their Counsel represent them to be, they ought not to forget the favors which our indulgent citizens daily lavish upon them. They should not oblige us to pay their debts. Fifty thousand dollars—the sum voted by Parliament to be refunded to the St. Albans banks, in lieu of the amount, a part of the proceeds of their robbery, taken from Bennett H. Young & Co., in this Province, and subsequently, by an act of fraud, restored to them—is rather too much to pay for the honor of their acquaintance. No writer, says Mr. Laflamme, has yet ventured to say that the prisoners should be extradited, by reason of the crimes charged against them. Again, I say, he is mistaken. With very few exceptions, every newspaper published upon this and the other side of the Atlantic, has denounced the savage deeds of his clients. For instance, the *London Post* (Government organ, Dec. 29), in a lengthy article upon the subject, says:—"That these "raiders" really *come within the terms of the Extradition Treaty, there can, we conceive, be no manner of doubt;* although an attempt was made to release them from custody, before the pretext of the badness of the warrants had been set up, on the ground that they were recognized belligerents, whereas the articles of the Treaty spoke only of ordinary depredations. Such a pretence will not hold for a moment. The Federals, indeed, quite as much as ourselves, have recognized the Confederates to be belligerents, and they have invariably acknowledged them to be entitled to the rights of war as against the Federals themselves; *but war is only war when it is waged either from the open sea, or from territory belonging to the attacking belligerents.* If, in the course of the recent Danish war, Prussians had secreted themselves on the shores of Norfolk with the view of making an attack upon Jutland; or, *vice versa*, Danes had proposed an attack upon Prussian seaports from Yarmouth or Hull, we should certainly have arrested them without any special treaty of extradition."

The *London News* (29th Dec.), referring to the St. Albans raid, says:—"We are bound to show the example of doing as we

would be done by; and as we have in former times uttered keen remonstrances, and even resorted to actual force, when an enemy used neutral soil to prepare machinations against us, it is imperative that we should now vindicate our fair dealing and maintain our friendly character, by prohibiting absolutely the abuse of our protection for the purpose of directing treacherous violence against the inhabitants of a bordering and allied State. We should expect France to do thus much for us if we were unhappily at war with America, and Americans plotted and directed from Calais expeditions to sack Brighton or burn Hastings. And it is clear that what we should regard as the duty of France in such a case would be still more her duty if the war were made upon our seaboard, not by a foreign nation, but by our own subjects in revolt. This is the American case at present, and there must be no hesitation in our doing to them the justice which we should look for from every friendly power if the case were our own."

The *London Morning Star*, we also find, is not less explicit. His opinion of the raiders' conduct has been expressed in these words: "We are quite satisfied that the Canadian Executive, equally with the Home Government, desire to make our neutrality as perfect as possible; and as the uncertainty of law is proverbial, the Colonial authorities ought to adopt executive measures to maintain the tranquillity of the borders, by their own police and by the military, in place of relying upon their ability to arrest and punish offenders after a raid has been committed. They may be sure that a repetition of these raids will cause serious complications, involving an enormous expenditure in warlike preparations, if they do not create such a feeling of irritation as to render the maintenance of peace impossible. The boundary which affords an easy protection to the Confederate spoilers returning with the contents of bank safes or traders' bills, opposes as little difficulty to a pursuing party; and it would be vain to expect exasperated people who had been robbed by banditti from Canada, to stop short at the visionary line, and commence a mediation upon international law. If effective measures are not adopted to compel our neutrality to be respected by the Confederate refugees, that neutrality will not be respected by the other belligerent; mutual irritation will beget exasperation, and exasperation will beget war. Such a result will be rather too high a price to pay for the honor of being selected by the Confederate skedaddlers from their own country, as the base from which to sally forth upon little robbing expeditions, which they are more inclined to adopt than to enter into the regular military service. Canada, governed as it is by the wise maxims of English policy, will ever give a free and safe shelter to political exiles, whatever may be their principles or their country, but the first duty

of these exiles is to respect the laws and neutrality of the land in which they seek an asylum, and not to attempt to drag that country into war for a cause in which it has no interest, and with which the bulk of the population have no sympathy. It is accordingly the duty of the Canadian Executive to compel the Confederates to cease these exasperating raids, and for this purpose to place the necessary force at the frontier, and to take such other measures as may be requisite to maintain the neutrality which the nation has unanimously adopted. It will be better to do this, even at considerable expense, than to run the risk of the calamities with which a repetition of such raids must necessarily threaten the prosperity of the colony."

These extracts from leading English papers indicate that the people of England have not much sympathy with the St. Albans raiders. At any rate, as this case is not, I hope, to be determined by in-door or out-door pressure, I will not further trespass upon the time of the Court, by referring to what has been said or written upon the subject in Canada or elsewhere.

Before, however, closing my argument, I desire to bring under your Honor's notice the fact, that during last November an attempt was made by a few Southern men to burn down the city of New York. As we all know, this attempt failed. But had it succeeded, it would certainly have entailed irreparable loss upon the people of that city. In fact, it would have proved a great misfortune—a severe blow to every State in the Union. We also know that some of the persons engaged and pledged to the commission of this diabolical deed, were arrested, tried, and found guilty for their participation in it. But, notwithstanding that the destruction of New York would, if carried out according to the plans of the Southern incendiaries, have materially affected the prestige, if not to a certain extent the resources of the North, I have yet to learn that any of these prisoners followed the example of the St. Albans raiders, and set up as a justification of their crime, that it was an act of military hostility, and one which by the laws of war they were permitted to commit against their enemy. No, the truth is, it was denounced everywhere, and in no place more indignantly than in the capital of the rebellious States. But, from what is transpiring around us here in Canada, it would really seem, that if the New York incendiaries had been so fortunate as to have reached Montreal, and be here arrested, there would not have been found wanting those who would proclaim them belligerents, entitled, by the very greatness of their guilt, to be ranked among the heroes of the war. Why any number of our citizens should take a view so hostile to the interests of the United States, I know not. We are, and must continue to be, their next door neighbors. Socially and commercially we are

intimately connected. And surely it is not wise, it is not prudent in us, who have so much to gain by maintaining unbroken the friendly ties that unite us to the great Republic, rudely, nay violently, to tear to pieces the bond of friendship that has for so many years secured to us the blessings of peace and the enjoyment of an uninterrupted reign of prosperity. I beseech your Honor to reflect well and seriously upon what you must know will be the inevitable consequence of the prisoners' discharge. Remember, if you set them at liberty, you justify, so far as you have it in your power, the atrocious crimes committed at St. Albans; and again open the door to a repetition of similar offences. Discharge those prisoners, and others will be found wicked enough to imitate their example. And what will be the result? Can you suppose for a moment that the United States will tamely submit to see their citizens on the frontier, robbed and murdered by Southern desperadoes, issuing from, and protected under the laws of Canada, without striking a blow? Would we quietly submit to such outrage under like circumstances? Suppose, for example, that Ireland was in a state of rebellion against England, that twenty Irishmen during its continuance had crossed the Atlantic, had found their way to St. Albans, and from there had secretly introduced themselves into the city of Montreal, had robbed our banks, shot down our citizens, and then fled with their plunder to St. Albans. What, I ask, would the law-abiding people of Canada say, if, to a demand for their extradition as robbers and murderers, the United States replied: That the perpetrators of these crimes committed them without criminal intent—that the state of war existing at the time between England and Ireland, sanctified their proceedings, and that as the accused claimed to be belligerents and asserted that they murdered and robbed the good people of Montreal in the name of rebellious Ireland, all further enquiry must cease, the Treaty never having contemplated the prevention of such gallant and patriotic achievements. Would we, I ask, rest content with such answer to our demand? Or would we not, on the contrary, regard with abhorrence, nay, with the most profound contempt, the people and the judiciary of the country who entertained such perverted views of national obligations—who sanctioned such infamous outrages? I would also beg to remind your Honor that although you have supreme control over this application for extradition, and may dispose of it in any manner you please, nevertheless, the expressed will of the Government ought not, in a matter of this great national and political importance, to be entirely ignored. It may be said, and it is undoubtedly true, that the Judges of Canada are removed far above and beyond all Government influence, where it is to be devoutly hoped they will ever and

always remain. But, as I have before stated, it is, and I say it in all humility, the duty of the Judge, particularly in matters affecting our political relations with foreign States, not to embarrass the Government by an unwise or injudicious application of the laws made and intended to preserve the national honor and the good faith of the citizens. I know that for the means adopted by the Legislature of this Province to guard against a repetition from within our lines, of St. Albans raids, the Government has been unsparingly abused. But do not the authorities which I have had the honor to cite—authorities recognized as laws binding upon all civilized nations—fully sustain the precautionary measures so taken? Nay, I venture to go a step further, and say that our Government is entitled to the everlasting gratitude of the country, for the prompt and efficient means they have taken to ensure the maintenance of our neutrality laws, and the inviolability of Canadian territory.

With these remarks I must bring my argument to a close, and leave to my learned associates the completion of the task, my part of which, I greatly fear, I have but very imperfectly performed. To your Honor's sense of justice I commit the case so far as I am concerned, expecting from you whose judicial attainments are of so high a character, a judgment that will reflect honor upon the judiciary of the country, and redeem us from the imputation of having so far failed to fulfill our Treaty engagements. In the words of the eminent Judge Jay, let us be faithful to all—kind to all—but let us be just to ourselves.

March 22nd, 1865.

Mr. Bethune, Q. C., (on behalf of the U. S. Government):—

It has been a matter of much surprise to myself, and I have no doubt has been so also to your Honor, that in neither of the addresses of the two learned Counsel who have spoken on behalf of the prisoners, has there been any attempt either by argument or authority, to prove that what was done on the occasion here in question was a legitimate act of war. To supply the place of such argument or authority, we have been favored with citations from books, to the effect, that in general it is lawful for one belligerent nation to kill members of the other belligerent nation, and to seize or capture their property, and with the assertion, oft repeated, that in all that occurred at St. Albans on the 19th of October last, the prisoners acted under lawful authority. In the absence of such argument or authority, I might be content to rest this branch of my case, relying on the weakness of my adversary; but, as I consider this point of vital importance in the present discussion, and as I am resolved, to the utmost of my power, to strip the

defence of even the semblance of legal authority, I must crave the attention of your Honor for a few moments while I read to you the opinions of some of the most eminent writers on International law, on the subject of the rights of nations in war, and as to what they have a right, or are allowed to do to the enemy's person and property.

The Counsel then read from Vattel, book 3, ch. 8, sec. 138, 172, 173, 191, 192; Martens, book 8, ch. 3, sec. 4; Manning, p. 136, 139; Polson, sec. 6, arts. 12 and 13; Woolsey, sec. 119, p. 205, sec. 120, p. 205, sec. 125, p. 214, sec. 129, p. 220, sec. 130, p. 224, 225, and note; 1 Kent, pp. 91, 92, 93; Lawrence's Wheaton, p. 586, 591 to 601 and 626; Halleck, ch. 17, sec. 2, p. 412, ch. 18, sec. 3, p. 427, ch. 19, sec. 12, p. 456, and sec. 13, p. 457:—The case of Burley in U. C.

These authorities establish, that according to the recognized rules of modern warfare, the property of private persons or non-combatants is exempt from seizure or confiscation, except in the special cases of penalty for military offences, of forced contribution for an invading army, or as an indemnity for the expenses of maintaining order and affording protection to the conquered inhabitants, and of taking property on the field of battle, or in storming a fortress or town. And in all these excepted cases, the action of armies or parties of men openly acting in the character of armed enemies is alone contemplated.

Now, in the present case, the facts disclose merely that the prisoners and their associates, secretly introduced themselves into an unarmed town, at a point far removed from the scene of hostilities, and there, in the garb of citizens, entered certain banks in open day; and, when all others but themselves had retired, suddenly displayed fire arms, and robbed the banks, and the individual Breck, who happened at the time to seek admission into one of them, for the purpose of retiring a note. It is true, that in acting as they did, they claimed to be Confederate soldiers, and that in the streets they affected to take prisoners, and discharged their fire arms, wounding one man and killing another; but, once the booty was secured, they all decamped on the horses which they had also stolen, leaving their so-called prisoners free. In all this we see nothing of the characteristics of war, and fail to discover any other object than robbery and plunder, under pretence of war. No one could seriously contend that such an act was *per se* an act of war. To all appearances it was nothing more or less than a common robbery, accompanied by a murder, and an attempt to murder. The only pretension that can be urged is, that in consequence of the alleged commission and instructions produced by the prisoners' Counsel, the act was *constructively* one of legitimate warfare.

To maintain such a proposition, however, it would be necessary that the commission and instructions should, at the least, specifically authorize the commission of robbery and plunder. Now, in the so-called commission of Bennet H. Young, he is merely notified of his appointment as a lieutenant in the provisional army of the Confederate States, and in the three letters of instruction, or what some of the witnesses called details, of the same date, he is merely requested to organise a body of men "for special service," and "execute such enterprises" as might be indicated to him, either by C. C. Clay, jun., in the one case, or Thompson & Clay in the other,—and, in the alleged instructions from Clay, it is stated, that he is authorized to act in conformity with a suggestion made by himself (Young), "for a raid upon accessible towns in Vermont." The "special service," "enterprises," and "raid" here referred to can only be legally held to mean those of a military character and such as are recognized in modern warfare, and cannot, by any ingenuity of argument, be held to extend to the robbery and plunder of banks and private individuals. But, even on the assumption that such acts as robbery and plunder were really intended to be included, I entirely deny the power of any Government to authorize such acts, and challenge my learned friends upon the other side to cite a single authority to support so monstrous a proposition. To afford them an opportunity to do so, I would refer your Honor to their favorite author, Lieber. At pages 16 and 17 of his treatise on guerilla parties, he says: "There are cases in which the absence of a uniform may be taken as very serious *primâ facie* evidence against an armed prowler or marauder. * * * It makes a great difference whether the absence of uniform is used for the purpose of concealment or disguise, in order to get by stealth within the lines of the invader, for the destruction of life or property, or for pillage. * * * Nor can it be maintained in good faith, or with any respect for good sense and judgment, that an individual—an armed prowler—shall be entitled to the protection of the laws of war, * * because his government or chief has issued a proclamation, by which he calls on the people to infest the bushes, &c." And at pages 84 and 85 of the "Trial of John Y. Beall," we find a letter from Dr. Lieber, of date the 5th of February, 1865, in which occur the following significant remarks, which he says he would certainly propose to add to his work in a new edition:

"I ought also to have given something on *enemies who in disguise come from the territory of a neutral to commit robbery or murder*, and those who may come from such territory in uniform.

"*I do'nt believe that such people, now called by the unacceptable term* RAIDERS, *have ever been treated of by any writer.*

"The thing created no doubt in the mind of any one. *They have always been treated as brigands; and it can easily be shown upon principle that they cannot be treated otherwise.*

"*Never*, so long as men have warred with one another—and that is pretty much as long as there have existed sufficient numbers to do so—*has any belligerent been insolent enough to claim the protection of the laws of war for banditti, who take passage on board a vessel, and then rise upon the captain and crew* (the case of the Philo Parsons), *or who gather in the territory of a friendly* power, steal in disguise into the country of their enemy, and there commit murder or robbery (the case of the St. Albans raiders). The insolence—I use the term now in a scientific meaning,—the absurdity, and reckless disregard of honor, which characterize this proceeding, fairly stagger a jurist or a student of history."

We are told, that the object of the raid was an attack on the town of St. Albans; and that the robbery of the banks and of Breck was a mere incident in the course of the raid; but when it is considered that no attack whatever was made on the town,—that, on the contrary, the prisoners and their associates sneaked into the town by twos and threes, and only remained long enough there to steal the money and horses they eventually carried off, without even attempting to bring with them any of the prisoners they affected to secure during their short sojourn, it is manifest that the expedition, such as it was, had but one object in view,—and that plunder and robbery.

On the supposition, however, that the alleged commission and instructions contained authority to commit robbery, as a special act of war, and that such an authorization was legal, I next contend, that, inasmuch as the instructions specially prohibited any violation of the neutral territory of Canada; and inasmuch as the expedition is proved to have been organized in this Province, to have proceeded thence, by way of St. Johns, to St. Albans, and to have returned immediately to Canada, the prisoners acted in excess, and, therefore, in violation of the pretended authority invoked; and consequently, that the expedition was entirely deprived of the character of lawful hostility. And in support of this view, I would refer your Honor to the judgment in U. C. in the recent case of Burley.

If there be any doubt as to the soundness of my propositions, thus far, it is *certain*, that even on the assumption that the so-called commission and instructions, dated at Richmond, Va., the 16th of June last, are really all that they are claimed to be, they are altogether insufficient, without the additional instruction, said to have emanated from C. C. Clay, jun., on the 6th of October last. No sophistry, unaided by the assistance of this latter document, can possibly succeed in withdrawing the act, committed by the prisoners,

from the category of the crime of robbery, in which it stands *primâ facie*, installed. The argument of my learned friend, Mr. Laflamme, that the fact alone of Bennett H. Young being a commissioned officer, and of the other prisoners being Confederate soldiers (even presuming them to have been such), was sufficient authority, is entirely at variance with the well-recognized principles of international law; and is completely contradicted, not only by his favorite author, Dr. Lieber, but likewise by another, whose work he cited at page 248: I refer to Lawrence's Wheaton, and specially to the foot-note at page 248: "Where persons acting under a commission from one of the belligerents, make a capture *ostensibly* in the right of war, *but really with the design of robbery*, they will be held guilty of piracy." It is manifest, therefore, under any hypothesis, that unless the special instruction invoked amount to a positive order to commit robbery and pillage, the prisoners were *absolutely without lawful authority*.

I now propose to show that the special instruction in question can have no legal effect whatever in the present case. In the first place, it is to be noted, that it is to the last degree unofficial and unauthentic in its character, and is not proved to have been written on the day it purports to bear date, a fact of vital importance to its legal applicability to the act in question, especially in view of the evidence of Mr. George N. Sanders, which, if it does not actually establish that the document was only written in the early part of December last (long after the raid was committed), at least taints it with so much suspicion, that it is quite out of the power of your Honor to hold in the absence of any direct testimony as to its existence in October last, that it was executed on the day it purports to bear date. Mr. Sanders, it is to be borne in mind, was notoriously a confidential agent of the so called Confederate States, and we may therefore fairly presume, that in the conversation he had with Mr. Clay, when the latter "said he would leave such a letter as the paper P" (the special instruction in question), and by which statement Mr. Sanders adds "*I infer it had not been written up to that time*," Mr. Clay disclosed all that he knew in favor or mitigation of the act of the prisoners. It is to be noted, that Mr. Clay carefully abstained from saying, that Young had his special authority *in writing* to organize and carry out the expedition in question, and merely stated that *he would leave* such a letter as would establish his assumption of "the responsibility of the raid." It is true, that when Mr. Sanders' attention was subsequently expressly called by Mr. Laflamme to the *date* of the letter P, he gives his opinion that the paper P was not the letter Mr. Clay promised to leave. As the date was long antecedent to the period of the conversation, this remark of Mr. Sanders was, under the circumstances,

only a natural one to make, and cannot destroy the value to be attached to his former statement, which had been made *after examining* the paper, as is apparent from the first portion of his evidence where he claims to prove the authority and *status* of "C. C. Clay, whose name is subscribed to document P." The only letter, moreover, to which Mr. Clay made allusion was one he was to *leave*. Now, when it is considered that the prisoner, Young, failed to produce this document, when he made his voluntary examination, as the special authority under which he pretended to act, and that it was produced at a late stage only of the proceedings, and that by Mr. Abbott, one of the Counsel (in whose possession, Mr. Cleary swears Mr. Clay informed him sometime after the raid it was), and that no other letter is produced, the legal inference is overwhelming, that the letter really kept by Mr. Clay was this document P, and consequently that it had no existence whatever previous to the 19th day of October last. There is, in addition, another, and to my mind fatal objection to this highly important document. It purports to be, in the first place, a letter of marque to commit pillage *on land*, a species of commission or authority unheard of in civilized war and therefore for that reason alone wholly illegal; and in the next place,—inasmuch as it was written in this country,—it claims for its writer the exercise of sovereign powers within the territorial jurisdiction of Great Britain!—Not only, however, is the document for these reasons utterly valueless, but there is a total absence of anything like evidence that Mr. C. C. Clay, junior, who thus claimed to exercise such extraordinary powers, was gifted or clothed with any authority whatever by the Government in whose name he claimed to act. It surely cannot be seriously contended, that the allusion to Mr. Clay in the letter of instructions signed by Mr. Seddon (styling himself Secretary at War) affords legal evidence of his being possessed of any such authority. In the first place your Honor does not and cannot legally know Mr. Seddon in the official capacity he assumes. In the absence of all recognition by our Government of the sovereignty or existence as a Government of the so-called Confederate States, the only person you could possibly accept as the apparently legal representative of such Confederate States, is the President or Chief of their executive power. And, under any circumstances, the mere informal and unofficial certificate of authority in Mr. Clay which is claimed to be presumed by Mr. Seddon's letter, establishes no legal presumption that Mr. Clay was really vested with such authority.

Apart from all these considerations, I would now submit with great confidence, that there is no legal evidence, that Bennett H. Young was a duly commissioned officer of the so called Confederate

States, on the 19th day of October last, and that the rest of the prisoners were on that day soldiers, owing allegiance to those States, and bound in the ordinary discharge of their duty, to take part in the expedition in question.

The document produced by Young, at the time of his voluntary examination, and which he calls his "commission as First Lieutenant in the Army of the Confederate States," is a *mere letter*, signed by Mr. Seddon as Secretary of War, *informing* him that the President *has appointed* him First Lieutenant, and further informing him, that *should the* SENATE *at their next Session advise and consent thereto*, you *will be* COMMISSIONED accordingly. The letter then directs him to communicate to the War Department, through the Adjutant and Inspector General's Office, *by letter*, his "*acceptance or non-acceptance* of said appointment," and with such letter to return to the Adjutant and Inspector General the OATH *herewith enclosed, properly filled up, subscribed, and attested.*

This document, at best, is *a mere notification*, that the President had selected Young for the post of a Lieutenant, and neither purports to be nor can be considered in any way to be a *commission;* the very document itself announcing that such *commission* could *only emanate from the* SENATE. Then can it be said, in the absence of an actual commission, to be equivalent to one, seeing that the Senate was not at that time in Session?—Had your Honor evidence before you, that the appointment had been *accepted by letter, communicated through the Adjutant and Inspector General's office*, and that *with such letter of acceptance*, Young had transmitted *to the Adjutant and Inspector General the* OATH that was enclosed, *properly filled up, subscribed and attested*, it is possible that this question might properly be answered in the affirmative. But, unfortunately for the baseless pretensions of the defence, although they sent a special messenger to Richmond for the purpose of obtaining everything that was "necessary to establish the belligerent character of the prisoners, and that they acted under orders," who was in that city as late as the 4th of February last, yet that messenger wholly failed to procure more than a copy of the above letter, and of one of the letters of instruction from Mr. Seddon, already alluded to, and copies of copies of certain muster rolls, all certified by a Mr. Benjamin, styling himself Secretary of War, and sealed with a seal purporting to be the seal of the so-called Confederate States, *and wholly failed to bring any document whatever, much less any act of confirmation of what had been done at St. Albans, signed or executed either by the* SENATE *or* THE PRESIDENT of these so-called States. Applying then the well known maxim of law,—*de non apparentibus et non existentibus eadem est ratio*, (bearing in mind, as is abundantly proved, *that the* SENATE *was still in session when*

the messenger was in Richmond, and had been so since last fall,) your Honor is bound to conclude,—that *no acceptance* was ever written and communicated by Young through the adjutant and inspector general's office,—that *no oath* was ever returned to the adjutant and inspector-general by Young *properly filled up, subscribed and attested,*—that *no commission* was ever issued by the SENATE,—and that *both the* SENATE *and* THE PRESIDENT *wholly declined*, by any act of theirs, *to confirm or ratify* what is generally denominated the St. Albans' raid. So far, therefore, as the prisoner Young is concerned, he acted clearly *without lawful authority*.

As to the other prisoners, they claim to be soldiers because they are referred to in the copies of muster rolls, which were brought from Richmond. It is difficult, owing to the alterations manifest on the face of these documents, to ascertain with certainty that any of the prisoners (with the exception of Marcus Spurr) are the persons indicated in these papers. Giving them, however, (for argument's sake), the full benefit of their identity, these muster rolls, at best, would only prove, that Swager was a Confederate soldier from the 1st of March to the 30th of April, 1864, and that Teavis, Hutchinson, and Spurr were such soldiers from the 10th of September to the 31st December, 1862. There is a total absence of proof that any of them were soldiers on the 19th of October last, and, as will be presently shown, they had long previously ceased to be belligerents.

In connection with this branch of the discussion, attention is invited to the affidavit made by Young and Spurr, on the 10th of January last, in support of their application for thirty days' delay. In this affidavit the delay is asked, to obtain "certain testimony which is *necessary and material* to their defence, and which they are *unable to procure in Montreal, or even in Canada.*" And it is also stated, that such testimony would establish, that all their acts "*have been approved of by the said Government of the said Confederate States, as being done in conformity with instructions so received from said Government, and have been recognised and adopted by the said Government* IN AUTHENTIC FORM, *according to constitutional law and usages.*"

The next point I have to submit is, that all the prisoners are proved to have resided in Canada for months previous to the raid, and that their chieftain (Young) had, in the fall of 1863 and winter of 1864, been attending the University of Toronto; they all being escaped prisoners from Camp Douglas. As matter of law, then, the prisoners by making Canada an asylum, had ceased to be belligerents; and inasmuch as the expedition started from neutral territory, and returned thereto, with their spoil, immediately after

its accomplishment, the expedition was *absolutely unlawful*, and, under any circumstances, created a *forfeiture* of the *neutral protection* of this country. On this point I would refer your Honor, to the following authorities: Wildman, page [59]; 2 Azuni, p. 407; Burlamaqui, 2 vol., pt. 4, ch. 5; Art 19; 3 Phillimore, p. 227; 1 Kent, pp. 117, 118, 119, 120, 121; Lawrence's Wheaton, pp. 713 to 720, inclusively, and p. 722; Halleck, p. 517, §4, 518, 524, 531, §23, 629, and 631 §4; Historicus, pp. 157 and 158; 3 Wheaton, p. 448; 2 Ortolan, Liv. 8, ch. 8, p. 261, 263, 265; 2 Hautefeuille, tit. 6, sec. 2, p. 46, 47, 49, 93, 95.

The following are some of the doctrines enunciated in these authorities:

"When the fact (of neutral territory) is established, *it overrules every other consideration*. The capture is done away: the property *must be* restored, notwithstanding that it may actually belong to the enemy."

"No proximate acts of war are in any manner to be allowed to *originate* on neutral ground."

"The law of war does not admit that the territory of a neutral people should serve as an ambuscade for one of the belligerents, to favor his operations of war to the detriment of the other."

"Every voluntary entrance into neutral territory, with hostile purposes, is *absolutely unlawful*."

"Troops are not a part of the territory of the nation to which they belong, nor has their flag any immunity on neutral soil."

"The party committing the breach of neutrality *forfeits the neutral protection*."

"Although it is a *technical* rule of the Prize Courts, that the captor can only recognize the claim of the neutral, yet, if the property captured in violation of neutral right *comes into the possession of the neutral State*, it is the right and *duty* of such State to *restore* it to its original owners. And such restitution extends to *all* captures *made in violation of neutral rights*."

And Historicus, at pages 157 and 158, says, that this latter remedy can be claimed by the belligerent whose property had been captured, and may be "exercised over property *or persons* who are at the time within the neutral jurisdiction."

I now come to the question of treason, which was raised by my learned friend Mr. Kerr. It would suffice to say, that the prisoners have wholly failed to establish that the crime here committed was that of treason. And if they had, the old doctrine of merger which is here invoked has long since exploded. On this point, I would briefly refer to the leading case of Regina vs. Button, et. al., 11 Ad.; and Ellis N. S., p. 929 and *seq*. Also to 1 Bishop, § 549, 550 and 551; and to Wharton, p. 256, 257, 768 and 769.

Mr. Kerr also contended, that should the prisoners be extradited, they would be liable to be treated as spies, and tried by Court martial. It is enough to say of such a proposition, that according to the well recognized rules of International law, the prisoners can only legally be tried for the offences for which their extradition is demanded. 2d Fœlix, p. 325–333; 1 Martens, p. 271. Such an abuse of a national treaty is not for a moment to be presumed, and if we may judge by what has been done in the case of Burley, who, according to the Toronto "Leader" (a recognised Confederate organ), has been ordered to be tried for the crime of robbery "on which he was extradited," with an instruction from Mr. Seward that "if acquitted he will have a safe convoy out of the United States," there is less cause for any real apprehension that the United States will abuse their treaty obligations.

The last point to which I shall specially allude is the one advanced by Mr. Laflamme, who seriously argued, that the *animus furandi* cannot in any way be presumed, and must be proved. The point is so untenable, and the proposition enunciated, so entirely opposed to the first principles of criminal evidence, that I shall refrain from citing any authority to disprove it. The maxim of law that "every sane person must be supposed to intend that which is the ordinary and natural consequence of his own purposed act" is too well known to need special confirmation by authority.

In bringing my remarks in this protracted case to a close, I cannot refrain from again urging upon your Honor, that the truly safe course to pursue in a case like the present, is to hold, in the language of all the judges in the Gerrity case, of Chief Justice Draper in the Anderson case, of Judge Ritchie in the Chesapeake case, and the four Judges who sat in the Burley case, that the questions of fact raised by the defence by way of justification of what *primâ facie* is the crime of robbery, can only be legally tried and determined by a jury in the country where the offence is committed. I therefore confidently claim at the hands of your Honor the commitment of the prisoners for extradition.

Mr. Johnson, Q. C., addressed the Court on behalf of the Crown. He said:—It was intimated by the Court at a previous stage of these proceedings, that the Crown, by its law officers, upon a question concerning the effect of a treaty, and the application and efficiency of our own local laws, enacted for the purpose of giving efficient operation to that treaty, had a right to be heard. That intimation of opinion so far as I myself, or any other professional man is concerned, must meet, I apprehend, not only with ready acquiescence, but speaking my own opinion merely, and that of the learned gentlemen who, on behalf of the United States, are conducting this prosecution, and without knowing, or venturing

to enquire, what may be the notions entertained upon this point by the learned gentlemen who appear for the prisoners, I feel bound to declare that the exercise of that right under the circumstances, seems to me to involve a responsibility which public duty will not permit me, if I would, to avoid; and that in this, as in all other proceedings taken under the express authority of Canadian Statute Law, the Crown is acting, and it is not only its right, but its clear and inevitable duty, to act, under a direct responsibility to the people of this country, for the manner in which it seeks to apply that portion of the criminal law of the land which concerns and regulates proceedings of this nature. I never could clearly understand how it came to be questioned, even in the excitement of the earliest stages of these proceedings, (and to judge from the remarks on that head made by my learned friend, who on the last occasion of your Honor's presence here, was the first to address you on behalf of the prisoners,) how it continues still to be questioned, that the Government of this country has a right to demand and contend for the execution of its own municipal laws in the Courts of Justice in Canada. It is very true that a foreign Government is, in the present case, the prosecutor, or more correctly speaking, the complainant; (for in strictness there is no prosecution before us); but that government is a complainant here, not for the purpose of trial and conviction; but for an object altogether preliminary, and strictly defined and limited by the laws of this country—the object of ascertaining whether an offence of a certain description has been committed, and whether there is probable cause to believe that the prisoners are the persons who committed it, and, as a legal consequence, are to be tried for it. The *place of trial* is not an element which can in the least disturb my reasoning upon this point of the case. In the instance of our own subjects, charged with offences against our own laws, our obligation to commit for trial, where we have the preliminary proof the law requires, depends on the duty of protection which all governments owe to their subjects. In the case of crimes committed in a foreign country, towards which, we are under treaty obligations to surrender fugitives from justice, the duty of committing in the form prescribed by the Statute, depends of course upon the treaty and the laws for giving it effect; but the nature and object of the enquiry are the same essentially in both cases; are directed to the same essential and important object; are controlled by the same general rules; and finally result in the same important end, viz., the trial in the country *which has cognizance of the offence*, of the guilt or innocence, of the party accused. I have heard much loose talk, suggestive of still looser notions about neutrality, hazarded on behalf of men who may perhaps be found, on examination by and

bye, not to have observed its rules very strictly; but in truth the laws of neutrality neither debar us from appealing to our own Courts to punish those who have committed breaches of these laws, nor from resorting to those same laws, where we are required to do so, for the purpose of executing a solemn treaty. The duty of neutrality is binding, not only on governments, but on individuals, and it might as well be said, that my learned friends on the other side are violating the obligations of neutrals by taking the part of the prisoners, as to contend that I am doing so, by endeavoring to uphold, as I understand them, the laws of my country in the present case. This erroneous idea has been carried so far, that it was made matter of grave complaint, or at all events, thought worthy of serious assertion, that the chief law officer of the Crown telegraphed to a Police Magistrate, to arrest suspected parties without warrant. I suppose my learned friend who thought that this interesting fact had sufficient bearing upon the case to call upon him to mention it, will not contest that the duty of apprehending, at the risk, of course, of those who do so, suspected felons under our own laws is incumbent, not only upon Attornies General and Magistrates, but also upon all other honest men; but he will meet me with the ready answer:—Oh! these people were Southerners and belligerents. Now the first intelligence probably which was flashed to the Government over the telegraph wires, disclosed the only fact that was then apparent, viz., that persons at that time in the limits of this country, had broken its laws, by engaging from here in an enterprise of a questionable description on the other side of the frontier, and then still further abusing the right of asylum, by provoking such pursuit as the people on the other side would have had the right to make, in the first heat of their just exasperation. There was of course no time for discussion or consideration in the hurry and excitement of such a moment; and I really am at a loss to know how the authorities would have been justified in instantly presuming, without examination or enquiry, that this knot of apparent straggling and excited malefactors were a brave and authorized army returning from a lawful warlike exploit, unless it can be said that the sudden and disordered appearance of half a dozen bewildered young men, with their pockets stuffed with stolen money, and themselves bespattered with mud, and bestriding barebacked horses, whose owners were screaming in hot pursuit, presented unmistakable signs of a military retreat duly executed by the chivalry of the South. The action of the Government then was necessary—was inevitable. It was what it should have been,—prompt and decisive; it was what the common dictates of duty and honor required, and if they had done anything less than they did, or had done it in any other manner, they would

justly have been amenable to the reproach of indifference, not only to the faith of treaties, but to the commonest obligation of duty towards the people of this country. If, may it please the Court, this case seemed to me to offer any occasion for forensic display, or in any possible aspect of it, either in what has hitherto occurred, or may hereafter take place, it could afford any ground for triumph, or even of satisfaction, I should be deterred from attempting the one, by the recent and still reverberating efforts and advocacy of the able and earnest men who have preceded me; and should be at once prevented from indulging in anything like the other, by the reflection that, in a Canadian Court of Justice, there is, and there ought to be, no possible triumph but the triumph of truth; and in any possible issue of this enquiry, there must of necessity remain regret and anxiety on one side or on the other. On the side of those who complain, if it be found that our laws are powerless, to give effect to treaty obligations; on the side of the accused, if, awaking suddenly to their true position in this most grave transaction, they should at last find that human laws are not playthings—that the obligations of nations are not trifles, and that in applying to their conduct the surest principles of law, and the most undoubted and settled rules of its administration in like instances, the color they have endeavored to give their acts, fades away at once in the light of fair enquiry and consideration, and that the sternest aspect of criminal justice is alone suited to their case.

Any topics of discussion that can possibly arise here, before your Honor, in the investigation of this complaint, confined as it is by law, to a preliminary enquiry, whether there is ground to commit for trial, can only be treated, as I understand the subject, under three heads. First, the complaint. Secondly, the answer to it; and Thirdly, the nature and legal limits of your power. I understand the cause of this enquiry to have been regulated by your Honor's expressed desire, that all the facts of the case,—all that the prisoners could reasonably contend to have any bearing on it whatever, should be laid before you, in order that you might have all that could possibly be advanced, as well by way of evidence, as of argument, in view, before pronouncing on the legal effect of anything that has been brought forward. This course, dictated probably by a just regard for the rights of the parties concerned, and certainly evincing an indulgent and humane caution which I shall be the last person to deprecate, has left open for discussion all these questions, as nothing has thereby been decided, or intimated, as to the legal effect of such evidence, or more properly speaking, such informal information by way of evidence, as has been laid before your Honor.

Upon the first point that I have suggested as proper for dis-

cussion here, there is little, I may say nothing whatever to be observed. The charge of robbery, and the direct participation in it of all the prisoners, as well as of some others not now before us, it was of course the duty of the complainant to establish to the extent required by our own laws, in order to justify a commitment for trial, if the case had occurred here. That this has been done is uncontested, and indeed incontestible; and no question has been raised or even suggested, that, but for the exculpatory testimony adduced on behalf of the accused, they must be committed. If any such pretension could have been urged, it is not to be doubted that, at the proper time, namely —when the evidence for the complainant was over, and before applying for and obtaining a month's delay to procure witnesses in exculpation, the able and astute counsel who represent the prisoners would not have failed to discharge their duty in that respect.

We come then at once to the consideration of the second point. What is the answer or defence of the accused to the charge thus avowedly proved against them, and by what proof and what support in law, is it attempted to be sustained? Their answer, I take to be, in substance, this. The act that you, the complainant have proved, we cannot deny the fact, is there; but the character that belongs to that act is not of the description that you contend for. You say it was robbery against the municipal laws of the State of Vermont. We tell you it was lawful war. You claim to treat us as criminals; we aver that we are soldiers, and that in what we did we acted as belligerents, and under lawful authority. This answer undoubtedly opens a wide field of examination, as well of the law affecting such cases, as of the particular facts that arise in this. I think, however, that the great expansion, or subdivision of propositions, which have been adopted on the other side, may be advantageously compressed, and restricted to the consideration of this answer, or explanation, or whatever we may call it, under two heads. First, is it war, open and visible, in its external characteristic, and its presumptive appearance? And, second, is it war, whether apparently so or not, under the peculiar circumstances that have been laid before the Court. As far as external appearances are concerned, to conclude only from what was described to us by the eye-witnesses of this proceeding, that it was a warlike operation may, I think, be fairly said to be impossible. If common sense were not quite a sufficient guide, by itself, to conduct us to this conclusion, the authorities already cited by my learned friend Mr. Bethune are upon this point conclusive. Vattel, Martin, Manning, Polson, Woolsey, Kent, Wheaton and Halleck concurring, as they have been shown to do, upon such a point as this, may safely be deemed sufficient authority, to guide us to the decision of what is, and what is not, consid-

ered upon general principles to be an act of war. One of the learned counsel has, however, upon this part of the case offered some lengthy observations upon the doctrine of intent. With that doctrine every one, I take it, who has practised in Criminal Courts, must be supposed to be tolerably conversant. The most obvious and easily applied rule upon that subject, I will take the liberty of quoting from one of the most familiar criminal books, Archbold's Criminal Practice and Pleading, 1 vol. p. 392. I quote from the latest edition of Archbold in two volumes, with Waterman's notes: "Another mode of judging of the intent is by presuming that the "party intended that which he effected, or that which is the natural "consequence of the act with which he is charged. If the natural "consequence of his act would be the death of another, a jury may "fairly infer from the act that it was done with intent to kill. If "the natural consequence would be to defraud another, a jury may "fairly infer an intent to defraud." Now let us apply this common and obvious doctrine to the case before us, or rather to that particular part of it I am now discussing. What is the natural consequence of robbing Mr. Breck? Is it that the national power of the United States is prostrated, or in the remotest manner affected by it. The natural consequence is that Mr. Breck loses his money; but it requires a great deal of imagination to conceive, and a good deal of ingenuity to explain, how that fact tended to exhaust the national resources, or attack in any manner the national existence. In touching upon this part of the case it is impossible not to feel the necessity of imposing some limit to what may, with any appearance of reason, be alleged to be an act of war. If these prisoners, instead of using violence and terror to get this poor old man's money, had used stratagem; in other words, if instead of openly robbing him, they had picked his pocket, would that be contended to be an act of war too? I must suppose from the course of the argument on the other side, that it would be held; and indeed it must be so held, there can be no doubt, if the act taken by itself, or merely accompanied by the declaration of the thieves, that they, as Confederate soldiers, can be held to confer upon the actors the conclusive character of persons performing a lawful warlike exploit. The truth is that, though all authorities denounce it, the practice of taking private property in war, or of inflicting unnecessary injury upon unarmed and inoffensive individuals, is a practice (and that is the utmost that can be said for it) that may be admitted to have been in some cases, an incident and a forbidden incident of war; but it is not, and never with reason can be contended to be, an act of war in its own nature. I gather from some part of the testimony—I forget whether it was in this case of Breck, or in some of the previous proceedings—that there

was, at or near St. Albans, an arsenal, or some such national structure, and in the town itself, one and only one, soldier. These opportunities of glory and destruction are, however, neglected. The arsenal and the soldier are, strange to say, both untouched, and poor old Mr. Breck is made to play a part in the history of modern war, which must have surprised him quite as much as it has surprised me, and the rest of the world, who had perhaps formed somewhat different notions of warlike achievements and martial glory. I will not stop now to discuss very minutely the contents or the dates of the various documents that have been put in on behalf of the prisoners. Their legal effect I shall notice when I come to another part of the case. The question, too, of whether these documents prove anything at all; whether Young can, under the circumstances contended for, be considered to have held a commission at all, and whether the others, all proved to have resided in this Province, for some time previous to this outrage, had really preserved the character of soldiers, supposing them to have had that character previously, and can be considered to have been so, in any intelligible sense, at the time this offence was committed; these are points which I am quite content to leave where they were left by my learned friends who are acting for the United States Government. To notice some of them, might perhaps be said to be descending to small points. It may be so; and yet the necessities and exactitude of legal proceedings may require it. What indeed were the points upon which all the celebrated modern cases of extradition have at last turned, except points of the narrowest and most technical description? Take Bissett's case; take Anderson's case; take the famous case of the Chesapeake; or come down still later to the case of the Gerrity. Upon what points were they all finally disposed of, but on those of the very narrowest form? The three first for defects—which may almost be called clerical defects—in the warrants of commitment; and the last upon the not much broader ground, that the piracy alleged and proved, was not the particular kind of piracy intended by the treaty. I feel, however, that upon this part of the case it cannot be necessary to enlarge;—that the idea of this enterprise presenting in itself any sign of lawful war, is untenable, and utterly unwarranted by the evidence. We have all heard, both in fable and in history, of instances of self-arrogated importance: we have read in our youth of the fly upon the wheel, and the frog that endeavored to distend its dimensions to those of the ox. We have read, too, in modern history, of the tailors in Tooley Street, who called themselves the people of England, and proceeded to alter the constitution of the empire;—but none of these instances can excel in ludicrous extravagance the pretence that, in going to a bank, in the middle of the day, in a

peaceable village, and easing an old gentleman of two or three hundred dollars on the threshold, the prisoners can be presumed, or believed to have acted as a military force—having lawful authority from a brave and civilized people to do what they did. We must remember, too, that we are here dealing with a question of proof, and not of presumption. It will not be presumed that war was being made a thousand miles from the seat of actual hostilities. We must have proof—certain and undoubted proof—to take away the criminal nature of the act, before we can say there is nothing left for a jury to try. The black color, so to speak, of the offence imprinted, must be completely washed away before we can refuse legal effect to the complaint that is supported as far as the law requires.

I come now to the second and most important question arising under this head of enquiry. The idea that the act complained of presented in itself any of the characteristics of lawful war having been disposed of, there remains the very important consideration how far the peculiar circumstances proved on the prisoners' behalf tend to give it that character; and whether, indeed, the circumstances so established, do not conclusively deprive the enterprise of any possible belligerent character, that might otherwise have been contended for. It is not to be expected that the Government of this country can view with indifference, the fact so clearly established by the defence, and the evidence in rebuttal, that this enterprise received its pretended authority within this Province, and proceeded directly from our frontier to St. Albans by the ordinary line of railway. The authority put forward is the authority of Mr. Clay. The date of that authority, as far as it can go for anything, appears on the face of the document itself to be 6th October, 1864. It is directly proved by two witnesses brought up by the prisoners, viz., Mr. Sanders and Mr. Clay, that Mr. Clay resided in Canada from June to December of that year; and from other particulars mentioned by these two witnesses; it is abundantly evident that Mr. Clay, though for obvious reasons, the place has been omitted to be named, in the way usually practised in dating documents, was at that time either in Quebec or Montreal, and probably in both, as occasion might require. We have, then, at the very outset of all, a fair consideration of this case, the fact that it proceded from our country, and I say that this fact is not only of great importance and significance in itself, but absolutely of decisive import upon the merits of the defence or explanation attempted by the prisoners. The Court will remember how, in their voluntary examinations, the prisoners all laid stress upon the assertion that they had violated no law of this country. It will be remembered too, how in addition to this aver-

ment, now proved by their own witnesses to be untrue, some of them were advised to reproach this country and its government with what they were pleased to call its unexampled conduct in this matter. It is far from my wish at this time, to say anything unnecessary, and for the mere purpose of aggravating their present position, but it is a rule of law, which I am obliged to invoke, that though a party accused can prove nothing in his own favor, by what he may say on his voluntary examination, yet that anything he does say, if afterwards contradicted, must have the gravest effect, on the degree of confidence to be placed in his account of the transaction. The prisoners were made aware, no doubt, of the importance of this element in their case, not so much with a view of avoiding their direct responsibility to the criminal laws of this country under a prosecution for the misdemeanor in itself; as on account of the direct and decisive bearing that fact must necessarily have upon the lawfulness of the enterprise, which they were going to set up by way of answer to the case made out against them. And well may these prisoners have felt that anxiety, and adopted that precaution; for even without the legal knowledge which they were in a position to command upon this subject, their own astuteness might readily have suggested to them, that mankind would be suspicious of the origin of such an extraordinary proceeding; for it was hardly for an instant to be conceived that without the criminal connivance of some one, or more than one in this country, and without the security of a neutral territory to retreat to, such an enterprise would ever have been entered upon at all, or that sane men would ever have contemplated it. Their own good sense too, and their own information,—for they are persons of some education,—might have informed them that, leaving positive law entirely out of the question, there was a plain and unanswerable reason, in the very nature of things, why even the most just and lawful and solemn war should lose its character, and become mere brigandage when directed from the shelter of a neutral territory. It is because nations who have the misfortune to be involved in war, though they may be expected to be armed at all points from which they may be lawfully attacked: upon the frontier of the enemy; upon the open sea; and even at any point of desert or uninhabited country; they could not be expected,—the laws of war and of common civilization forbade them taking the precaution to be armed along the common frontier of a friendly power. The law of nations authorized, and prudence called upon them to be prepared at all these other points; but honor forbade them to suspect a friendly power, or to distrust his power, to maintain his own laws. They were called on to be prepared for the surprise and even the treachery of their enemies; but not for the acquiescence,

or even the apathy of their friends. Clear as these principles undoubtedly are in themselves, they are still more clearly enunciated by writers on the law of nations, and by judicial decisions of the highest authority.

The question of the absolutely unlawful character of even an apparently warlike expedition starting from a neutral territory, has been evaded by the counsel for the prisoners, and instead of the question which arises in this cause, and arises under the evidence adduced by themselves, being made the subject of discussion, another question, and one which has nothing whatever to do with this case, has been raised and discussed by those gentlemen. The question we are interested in discussing here is, whether, origin and progress in, and emanation, from neutral territory, deprived an expedition of lawful belligerent character, so as to nullify it, in the present proceeding, in a neutral country, where its lawfulness is set up to destroy the character of otherwise proved felony. The question which they on their side are desirous of treating, is whether, as between two belligerents, the one making lawful war in the other's territory, the soldiers so lawfully making war on its soil will be held *in the Courts of the invaded country, when they are tried*, to be ordinary criminals.—This latter question, the solution of which depends entirely upon evidence at the trial, is the one that was discussed in McLeod's case. The only case, I believe, in which it ever received a judicial decision, and that decision rendered by Judge Cowen, was to the effect that they were not answerable. I am quite aware that in a review of this decision published in the Appendix to the 26th volume of Wendell's Reports, the contrary opinion is ably supported. The responsible judicial decision was that of Judge Cowen, acting as a Judge of the Supreme Court of the State of New York. The review of that opinion is from the pen of Judge Talmadge. The Judge, acting as such, decides that, even in such an extreme case as that of Alexander McLeod, the particulars of which are too well known to require repetition, the party is liable to the ordinary criminal courts. The reviewer says he is not. It may seem, that the Judge was wrong, and the reviewer right; but still the decision is there, legally unreversed. Admitting, however, for the sake of argument, that such is the case, what has the principle, in either view of it, to do with this case? The question there discussed, is, whether the soldiers of a lawful war-making power are liable, *in the enemy's territory, where they go to make war*, to be treated as private criminals. This is so clearly a matter to be discussed between the two powers engaged in the war, that I feel at once the impropriety of detaining the Court by any reasoning to prove it so. Whether that question will operate effectually or not for the acquittal of these men, in the

State of Vermont, when they get there; in other words the State of the Law upon this subject in Vermont, is a consideration not to be dealt with, until the facts are ascertained in those Courts. To the facts so ascertained the law is to be applied, when the Jurisdiction of those Courts comes to be exercised at the trial, and whatever may be our opinion upon the merits of the dispute between the judge and the reviewer, it is quite certain that that question can never be decided while the prisoners remain here. The strict position of the prisoners upon this point is absurd and illogical in the extreme. They say, we have an excellent defence in the courts of the United States, upon the issue of whether we are guilty or not —a pure issue of fact whether we are felons or lawful soldiers; but do not give us up to the power which alone can try that question —the country where the facts occurred, because it is bound to decide in our favor! The position of the United States government on the other hand is logical and conclusive. It says; certain men have committed one of the offences mentioned in a treaty subsisting between us and the sovereign power of Great Britain. They deny having done so; they advance statements depending upon a multitude of facts which we are willing to try in the ordinary courses of justice; but we cannot try them while they remain in Canada. Let therefore the promise of the nation made by treaty be fulfilled, and in due course, a trial of all these points shall be had. This perhaps would be the proper place to interpose a word upon the distrust either felt or affected in some quarters for the United States tribunals. I had always imagined as a lawyer that the country in question was singularly free from imputations of that description. Certainly in the matter of the execution of this treaty we, on our side, have had no ground of complaint, and in the latest case that has occurred in England under it, we all know the high terms in which his Lordship the Chief Justice extolled the administration of the law in the United States of America. All this however I feel to be beside the question, and beneath the attention of this Court. Of course if the nations have no confidence in each other, they can agree to abrogate the treaty; but while it subsits, it is merely appealing to the worst and lowest of men, to talk of abuses which all educated people know there is not the slightest chance of arising, and which are no concern of ours, at all avents until they do. If we had not confidence in them, we should have had no treaty with them; and its very existence implies that we, as a civilated nation, are satisfied of the justice of their Laws.

If the prisoners were tried in a manner at variance with the ordinary course of criminal proceedings in the United States, or if acquitted, they were afterwards retained as prisoners of war, either fact would be a good ground for national remonstrance and com-

plaint, or for putting an end to the principle of extradition between the two countries.

Sir Cornwall Lewis observes with reference to this: "The "assumption upon which a treaty of extradition rests is, that a "civilized system of criminal law is executed with fairness, and "that the cases claimed for surrender are those of offenders really "suspected of the crimes with which they are charged. If a dis- "honest and colorable use were made of such a treaty; if, for "example, a political refugee were charged with one of the enu- "merated offences for the purpose of bringing him within the "power of his Government, and if, when he had been delivered up, "he was punished for a political crime, it is clear that a system of "extradition could not be maintained with a government which so "perverted the treaty."

We cannot, therefore, assume the prisoners will be otherwise than fairly and justly tried; and even if we did, we have no right for that reason to evade this clear obligation of the treaty, and to constitute ourselves here the tribunal which is to try the alleged offence, thus superseding the proper jurisdiction of the Courts of the United States, within whose territory the act charged was done.

All after considerations connected with any anticipated abuse of the Treaty must be left to the Executive Government, and cannot guide the action of a court of justice.

To remove any influence, however, which such an argument might have on the mind of the Court, it may not be inappropriate to say that there is the clearest authority of writers on international law, that the prisoners could not be tried except for the offence with which they are charged. Fœlix says: "Il est aussi de règle l'in- "dividu dont l'extradition a été consentie ne peut être poursuivi et "jugée que pour le crime a raison duquel son extradition a été "obtenu."

Addressing myself, then, at this moment, directly to the question whether the circumstances proved in this case clothe the transaction with the character of lawful war, I beg leave to read, almost without comment, some extracts I have made from the most esteemed authorities upon international law. Upon one preliminary point, it is to be observed that Judge Cowen and Judge Talmadge, his critic, both agree. "To warrant the destruction of property, or the taking of life," says Judge Cowen, "on the ground of public war, it must be what is called *lawful war* by the law of nations." "All will agree," says Juge Talmadge in his review, "that the war which affords impunity to those engaged in it, must be a lawful war." Vattel 13, 3, c. 4, sec. 67, says: "a war lawful and in form is carefully to be distinguished from an unlawful war entered on without any form, or *rather from those incursions* which are

committed either without lawful authority or apparent cause, as likewise without formalities, and only for havoc and pillage." There is no mistaking the meaning of this language. If the prisoners seek irresponsibility here, they must show at least, that they had lawful authority for what they did. The act of war they invoke to shield them must be a lawful act by the law of nations. Now, to begin with the pretended authority of Mr. Clay, let me ask where was the power of Mr. Clay, on Canadian territory, to give lawful orders at all? But it may be said he was bound to obey the authority of Mr. Seddon, the Secretary of War. In the argument of Attorney-General Hall, in the McLeod case, 25 Wend., page 530, he thus expresses himself, with the apparent assent of Blackstone, whom he quotes:—"It is not a true position," says the Attorney-General, "that he was bound to obey his Sovereign's commands." Blackstone says, "an act of Parliament contrary to the law of nations is void." How much more the act of a Sovereign? or let me add, of a President of the Confederate States, or a Secretary like Mr. Seddon? "Has it ever been the practice," asks Judge Cowen, (25 Wend., page 532) "as collected from the history of nations, for one nation to send such orders to be executed on the territory of another? Has such an order ever been considered valid? A Sovereign," says Vattel, B, 3, C., 2., section 15, "has no right to command what is contrary to the law of nations."—At page 582 Judge Cowen observes: "No writer on the law of nations *ever ventured the assertion, that one or two belligerents can lawfully do any hostile act against another upon neutral ground.* If it be not a plain deduction from common sense, yet on principles on which publicists universally agree, all rightful power to harm the person or property of their enemy *dropped from their hands*, the moment they entered a country with which their sovereign was at peace." These words were applied to McLeod and his associates, their perfect propriety in that case is not questioned by Judge Talmadge in his review, except upon the assumption of fact that the Canadian authorities *were not at peace* with that portion of American territory. Let us, therefore, with the concurrence of these two jurists, apply the same language to this case, and ask if all power of acting offensively against their enemy *did not drop from the hands* of these prisoners, and from those of Mr. Clay himself, the moment they entered Canadian territory? Most undoubtedly, if I understand the English language, and this is reason and authority I am reading to the Court, all such power ceased from that moment. Judge Cowen continues as follows:—"No exception can be made consistently with national safety. Make it in favor of the civil authorities of another State, and your territory is open to its constables; in favor of their military, you let in their soldiery; in

favor of its sovereign, and you are his slave." How is it possible then, without proclaiming that we have ceased to be neutrals, and have deliberately, and as a nation, espoused the cause of one of the belligerents, to hold that we can lawfully allow to be executed on our soil, whether by means of Mr. Clay, or any other person, the orders of Mr. Seddon or even of Mr. Jefferson Davis himself, and if we do so, shall we not cease to be an independent and neutral power, and in the words of Judge Cowen, become the slaves of those to whom we thus tamely submit ourselves. One or two things must be published to the world by the judgment which your Honor is bound to pronounce on the present complaint. The Court must decide that the British dominions are neutral territory, as far as regards this war, or that they are not. To decide that they are not, would be to contravene the public law of the realm, and the express command of the sovereign. To decide that they are neutral, involves without the possibility of escape from the conclusion—the necessary consequence that this act authorised, originating and proceeding from, here, is deprived by that circumstance alone, of the character of lawful hostility. Vattel B. 2, c. 7, s. 84, says, "It is unlawful to attack an enemy in a neutral country, or to commit any other act of hostility." "A mere claim of territory," says Sir William Scott, is "undoubtedly very high. When the fact is established it overrides every other consideration," (5 Rob. Rep. 20 1) and he refused to recognize a capture of an enemy's ship, within a marine league of our coast. "We only exercise the rights of war, in our own territory," says Bynkershœk, "or in the enemy's or in a territory which belongs to no one. B. 1 c. 8. "There is no exception" says Chancellor Kent, "to the rule that every entrance into neutral territory with hostile purposes is absolutely unlawful. 1, Kent. 119, 4th ed. Judge Talmadge's review, so often cited (p.678 of the 26 Wendell (admitting with Judge Cowen, that acts unlawful *per se* are alike unlawful in the Sovereign, and in the subject, adopts also Judge Cowen's language, and states the reason to be, "that where he has no authority, there he is no king, for wheresoever the authority ceases, the king ceases, and becomes like other men, who have no authority." The language of Chancellor Kent, which has been cited by my learned friend Mr. Bethune, to explain the citation of the same author, at the same page, made by my friend Mr. Kerr, is equally plain and explicit. He cites the authority of Sir W. Scott, and says:—"In the case of the twee Ge brœders (3 Robb, 336) it was explicitly declared that no proximate acts of war are in any manner to be allowed to originate on neutral ground; and for a ship to station herself within the neutral line, and send her boats on hostile enterprises, was an act of hostility much too immediate to be permitted. No act of hostility

is to be commenced on neutral ground. No measure is to be taken that will lead to violence." "There is no exception to the rule that every entrance into neutral territory, with hostile purpose, is absolutely unlawful. The neutral border must not be used as a shelter for making preparations to renew the attack. This would be making the neutral country directly auxiliary to the war, and to the comfort and support of one party." 1 Kent, p. 120. The same doctrine is contained in Wheaton, p. 713, and at p. 717 of the same book, the author, admitting that it does not apply to remote and innocent uses, such as procuring provisions, lays down that it is in no case to extend to any proximate act of war whatever. In the present case, not only was a proximate act of war committed, but the direct and only origin or authority for this enterprise is proved by the prisoners themselves to have emanated from a person residing in this country. If any doubt could exist upon this part of the case, that doubt would surely be set at rest by a reference to the recent case of Burley decided by the two Chief Justices of the Queen's Bench and Common Pleas, and two Judges in Upper Canada. This case is so recent, so directly in point, and so decisive of the question I am now discussing, that any extended or argumentative reference to it I feel to be quite uncalled for. The gist of that case, however, the point of all others, upon which all the judges clearly indicated a perfect unanimity of opinion, was exactly the point which I have been endeavouring to lay before the Court, in the present case, viz.: that the inception, or carrying out in any manner of such a project from neutral territory of itself *deprived the enterprise of a character of lawful hostility*. So solemn and decisive a judgment, pronounced by judges so deservedly eminent, and after the fullest argument of every point, which the self-respect of the profession in Upper Canada suffered counsel to raise, was felt, no doubt, by my learned friends, to be a matter which they could not refuse to notice; but which at the same time, they were quite unable to dispose of, in the ordinary way of treating judicial decisions; so, instead of having any answer attempted to the reason, or the principle of that decision, we have been obliged to content ourselves with hearing the Bar and the Bench of Upper Canada assailed and depreciated in a peculiar style, which I trust those learned persons will not believe to be usual in the practice of the profession, in this part of the Province. But apart, may it please your Honor, from all judicial decisions: apart from all *ex professo* writings and opinions, we need not go further than our own criminal law to ascertain tne true character of such enterprises undertaken upon our soil, and to satisfy ourselves that they are plainly denounced as unlawful. That under the common law in some cases, and by express statute in others,

they are subject to indictment. If then this be law, there is an end to this part of the case; and it remains to be shown how Mr. Clay by coming into our country and setting its laws at defiance: how by coming here and in his own person committing an indictable offence, and as respects his associates, causing them to commit the like offence, he can confer upon his actions, or upon theirs, the character of lawful authority. It remains to be shown, I say, that what in the cases of all persons indiscriminately, whether foreigners or not, is directly forbidden, declared to be unlawful, and punished accordingly, becomes lawful, when instigated by Mr. Seddon, and actually practised by Mr. Clay and his accomplices, the unfortunate men before the Court. Before taking leave, however, of this part of the case there is a very high authority, and a very recent one, which I find printed in the pamphlet containing the trial of John Y. Beall. It is the authority of Dr. Lieber contained in a letter read by the Judge Advocate upon that trial, to establish points not arising in the present case, it is true; but it incidentally touches upon the point we are now considering, and in the following words disposes of the legal character of such enterprises as this upon general principles: "I ought to have given something on enemies who in disguise come from the territory of a neutral to commit robbery or murder, and those who may come from such territory in uniform. I do not believe that such people now called by the unacceptable term "raiders" have ever been treated of by any writer. The thing created no doubt in the mind of any one. They have always been treated as brigands, and it can easily be shown upon principle that they cannot be treated otherwise. Never, so long as men have warred with one another, and that is pretty much as long as there have existed sufficient numbers to do so—has any belligerent been insolent enough to claim the protection of the laws of war for banditti who take passage on board a vessel, and then rise upon the captain and crew, or who gather in the territory of a friendly power, steal in disguise into the country of their enemy, and there commit murder or robbery. The insolence—I use the term in its scientific meaning—the absurdity and reckless disregard of honor which characterize this proceeding fairly stagger a jurist or student of history." This is the language of the eminent Dr. Lieber, an authority admitted to be of the highest character by my learned friend, Mr. Laflamme, who was himself the first to cite the work in support of the position which I do not contest, that as between armies in the field, the laws of war alone apply. The insolence or non-insolence, that is to say, the unused and unheard of character of such proceedings, is doubtless the reason why no writer, as Dr. Lieber says, has ever considered it worth while to waste paper or time in describing, or in any manner dwelling upon, what is in itself obviously unjustifiable.

Here then I feel I may safely leave this most important and decisive portion of the prisoner's case. I beg leave now to address myself to a part of this case hardly less important than the preceding. What is the duty of the examining magistrate in such cases? What is the nature and extent of his power? For the purpose of this enquiry it is not necessary to assume these men to be guilty. The complaint only affirms that there is an accusation against them, for which they are liable to trial in the United States where the act was committed. What then is the duty of the magistrate?

Sir Cornwall Lewis puts it thus clearly and explicitly: "In order to render a system of extradition effectual, the amount of proof, and the formalities required, should be as small as is consistent with the prevention of abuse. The essence of the system is, that confidence is reposed in the foreign government and in its administration of criminal law. The assurance of that government ought to be the chief guarantee against abuse. If, therefore, it claims any fugitive through the accredited diplomatic channels, and gives a reasonable proof that there has been a proper investigation by the officers of police and the functionaries conducting the preliminary stages of judicature, and that this investigation had led to the conclusion that the person in question is guilty of the offence charged against him, it is desirable that the extradition should take place, upon proof of identity of the party, and without any full investigation, such as a magistrate would make for the commitment of a prisoner in this country.

And again he says: "The recognition of the criminal law of a foreign state, and the confidence in its regular and just administration, which is implied in a system of extradition thus carried into effect, is paralleled by the established practice of this and other countries with respect to the civil law."

In fact the rule, thus clearly stated, has been followed in practice wherever questions under the Treaty arose.

In the Anderson case, Chief Justice Draper, with reference to the case of a party accused of murder, in order to justify it, observed: "If there is a question of fact to be tried, I apprehend he must be surrendered, *as such a question can only be tried in the country where the fact arose.*"

In the Chesapeake case the same question was incidentally disposed of. The counsel for the prisoners was proceeding to comment on the evidence of authority from the Confederate Government, when Mr. Justice Ritchie observed: "Assuming, as you must do at this stage of your argument, the correctness of the proceedings against the prisoners, and the magistrate's jurisdiction of the offence, do not these questions fall within the province of the Superior Court on the trial of the prisoner? Is it not the magistrate's duty now

merely to see if a preliminary case is made out? I think we must act in this case just as if it was an offence committed here. The question is, would I, on the evidence, commit for trial in this country? If so, must I not commit the parties for extradition?

(*Counsel.*) "In Anderson's case a *prima facie* case was made out, but the prisoner was discharged. And so in U.S. vs. Palmer, 4 Curtis, 314. Parker is found in command of the Retribution, and Braine and Parr acting under him."

(*Ritchie, J.*) "I think these questions are proper for a jury, and not for the magistrate. His duty is simply to deal with this case as a magistrate would deal with an offence to be tried in this country.

These principles, so self-evident, have formed the invariable rule of action by which the American Courts and judges have guided themselves.

In the recent case of Muller, heard before Mr. Commissioner Newton, the prisoner applied for permission to adduce evidence, to establish an *alibi*. The following objection was taken by the prosecution:

"The evidence is such as would plainly require the commitment of Muller for trial if the offence had been committed here, and it results that a certificate leading to his extradition, that the case may undergo an investigation in England, should be granted." And on this the Commissioner, in the following language, applied the law clearly applicable to that and every other case arising under the Treaty: "Having heard and carefully considered the testimony, and weighing it in my mind, that there is not sufficient evidence for me, sitting here simply as a magistrate, and the duty for me being simply to determine, not whether the man is guilty or not, but whether there is sufficient evidence to require that he may be committed, in order to afford an opportunity at the place where the crime was committed of proving his guilt or innocence. *It is not necessary for me to say whether I would convict the man*, and sentence him to be hung, were that even in my province, but the duty that I have to perform is simply this: first, has there been a crime committed? If committed, is there probable cause from the evidence adduced to say that the accused is the party who has committed the crime? Now it appears to my mind clear, that looking at it in that light—in the light of probable cause,—it is very plain that there is such cause. I do not desire to sit in judgment on this man, but I wish it were in my power to discover any evidence in the case whereby I could withhold the certificate; but I am bound to say that the combined circumstances, to my mind appear so clear and distinct, that upon the question of probable cause I cannot have any doubt."

In the still more recent case for murder on the high seas, on board the British brig, "Raymond," in which the prisoner desired to show by evidence that the act was justifiable, the same judge applied the like clear principle, as follows: "Even admitting that evidence of justification could be legally received (of which however, under the Treaty I have great doubt), it is not for me to determine what effect it might or might not have upon the minds of a jury on a final hearing or trial for murder. Under the Treaty I am only to determine the question of probable cause. The simple question here to be decided is whether there is sufficient probable cause to justify his return for trial to the country within whose jurisdiction the crime is charged to have been committed.

In the case of Ternan and others for piracy, alleged to have been committed in seizing the steamer "J.L. Gerrity," in the month of November, 1863, the judges of the Queen's Bench in England, though differing in opinion on the question whether piracy, *jure gentium*, was within the Treaty, did not controvert the same principle laid down by Lord Chief Justice Cockburn: "No doubt, *prima facie*, the act of seizing the vessel, saying at the same time that it is seized for the Confederates, may raise a presumption of such an intention; but then all the circumstances must be looked at to see if the act was really done practically, which would be for the jury; and I cannot say that the magistrate was not justified in committing the prisoner for trial."

And Mr. Justice Crompton observed, "Upon the latter point I quite concur with my Lord, because it is not for us to weigh the effect of the evidence which is for the jury; and all we can consider is whether there was enough to justify a committal for trial, and I agree with my Lord that we cannot say there was not."

It is unnecessary to multiply authorities on a point so clearly defined by the Treaty; but the following observations of Attorney-General Cushing, in advising the Government of the United States in a case where the prisoner arrested for extradition on a charge of murder, desired to prove insanity before the committing magistrate, are so pertinent that they are quoted: "The evidence upon the exhibition of which this (*i.e.*, delivery up to justice) is to be done is such as, according to the laws of the place where the fugitive, or person charged shall he found, would justify his apprehension and commitment for trial if the crime or offence had been there committed." "Had the Treaty conferred upon the magistrate—if it could have been made competent to such an object—the power of trying the person charged for an offence committed within a foreign jurisdiction, and of punishing in case of ascertained guilt, the inquiry might have presented itself in a different aspect. But the stipulations under examination aim at no such end, but are

confined to the ascertainment of facts which can weigh nothing in any consequent and purely judicial investigation of the charge." It is contended, therefore, that both reason and authority support the conclusion that under the terms of the treaty, and the statutes relating thereto, on a preliminary judicial enquiry, we have no right to pronounce upon the state of facts which might or might not have justified the act with which the prisoners stand charged, but that our plain duty is to say that these acts must be tried before a jury. On the subsidiary question, whether as neutrals we can constitute ourselves judges of the character of the act complained of, it is submitted that when two belligerent powers have a dispute as to whether a particular act is one of robbery or one of war, it is not the duty of a neutral power (when there is no doubt but that for the state of belligerency which exists, the act would clearly be robbery) to decide so grave and serious a question on a mere *ex parte* enquiry. If one belligerent treats prisoners as felons, when they were but performing their duty as soldiers, the other belligerent, to whom the prisoners profess allegiance, can obtain redress by reprisals, retaliation, or otherwise.

I have now endeavored to lay before the Court in as succinct a manner as I was able to do, the view which I, humbly representing the first Law officer of the Crown, have felt constrained to take of this transaction, and of the attempt that has been made to justify it. I have endeavoured to perform a legal function, in a legal manner, and I have purposely avoided all allusion to many topics, which in so serious a case might possibly have justified allusion on my part. There is one aspect of the case, however, resting on the broadest grounds of international comity, and of the duty arising out of the relationship which should properly subsist between two countries situated as Canada and the United States. The circumstances of the two countries,—their geographical position,—the difficulty of exercising effectually a continuous vigilance over the acts of those who under pretence of seeking mere security, have only resorted to Canada that they may mature with impunity hostile schemes against an adjoining power with whom we are on terms of peace and amity, have all to be considered. Our conduct ought to be what we would expect and exact from others in the like case, and such as the law of civilized nations, in the exceptional position we occupy, demands. The doctrine of affording an asylum to political refugees is admitted to the fullest extent; the laws of hospitality, the dictates of humanity and the general feelings of mankind support it. But it is an asylum in the proper acceptation of the word, which is sought; and are the prisoners political refugees or exiles rightly so termed? Our duty is not confined to affording a sanctuary within our territory under all circumstances for those

who call themselves political offenders; the further duty of seeing that the privilege of asylum is not abused to the injury of a friendly power is equally imperative. We are bound to consider whether the neutral ground is only resorted to because it offers a safe and convenient resting place in the intervals of warfare, and as the readiest means of inflicting with impunity injury in any other shape on the friendly power; whether in fact the acts of public hostility or private wrong would ever have been undertaken and committed but for the proximity of the supposed asylum—whether they are not in reality attributable to and prompted solely by the facilities which our territories afford both for attack and escape. We must enquire whether the *animus* in which it is sought is to obtain peace and permanent security, and whether the party fleeing comes in the light of an exile. If we are satisfied of the contrary, then we must say that this neutral ground cannot under the name of an asylum be used as a vantage ground, and that the party fleeing from territory hostile to him, has by his own acts forfeited the security which nations usually accord. He has no right to abuse the only privilege which our soil confers—that of being safe so long as he is passive—nor has he the right, because he believes he can escape hither, to plan and perform acts which would never have been dreamt of, but that an asylum was near, and that he believed he could reach that asylum in safety. If within that supposed asylum he recuperates and prepares for fresh acts of aggression, and is not content with finding security against oppression and wrong himself, but resorts to it only that he may mature, and sally forth to execute, schemes of offence on others; then he has not the qualities of a refugee, nor is his object an asylum. A refugee is one who, after being overcome as a combatant, flies from his enemy to the nearest place of security—not one who merely, because there is a neutral ground at hand, undertakes to inflict an injury because of the supposed immunity it affords. An asylum implies security from mere pursuit after an act which the law of nations will recognise—not the means of annoying those pursuers with impunity, or converting the sanctuary into a means of offence. The Treaty was certainly never intended to protect those who committed predatory acts under the name of war across an imaginary line. Sir Cornwall Lewis put the difficulties which must spring from the immunity extended to such acts thus:—"It must not however be supposed that the rigid territorial principle of criminal jurisdiction though founded on sound principles, is exempt from its compensating disadvantages, or that the civilized world can be practically cut into separate sovereignties, each acting without reference to the criminal law of its neighbor. Where the territories of neighboring nations are conterminous—where they are separated by a merely

arbitrary line, without any natural demarcation, such as a chain of high mountains or a broad and unfordable river, and where therefore a facility of mutual passage across the frontier limit exists, there the entire independence of the two territories for the purposes of criminal jurisdiction may lead to a permanent state of insecurity both for person and property."

My learned friend who spoke last on behalf of the prisoners, has referred to a portion of the speech of Daniel Webster, made in the Senate of the United State, in defence of the Treaty of Washington, for the purpose of showing the exemption of the persons of soldiers from individual responsibility for what they do while acting under lawful orders. Nothing that was said by Mr. Webster on that occasion—nothing that has ever been said by any authority on that subject has the slightest application to the present case. The whole weight of the authorities cited in support of the principle contented for by Mr. Webster, applies to lawful belligerent operations, as recognised and practised by civilized nations; and it is merely begging the question, to assume that this transaction is of a lawful character, for the purpose of applying the principles laid down in those authorities. Nor is it correct to say that Mr. Webster ever once in the course of that celebrated speech, or on any other occasion extended the principle in question to exemption from trial. On the contrary we find his express words to be at page 125—"That McLeod might insist on the same facts, and insist on the same defence or exemption at his trial." This is in the answer of the American Secretary of State to a letter from Mr. Fox, the British Minister at Washington; and further on, at page 131, we find Mr. Webster using these very words as if to set the matter at rest:—"Mr. Fox was told that these proceedings must go on, until they were *judicially terminated*," and in point of fact we know that they did go on; that McLeod was brought to trial, and acquitted on the merits. But since the writings or the sayings of Mr. Webster are referred to, why did my learned friend's examination of the speech come to such a sudden termination? Why did he not proceed to that farther portion of the renowned statesman's explanations on the subject of this treaty, about which there can be no doubt; that portion of his remarks where Mr. Webster himself tells us not only the object, but the effect of the stipulation of this Treaty, for the mutual surrender of fugitives from justice. Here are the words, at page 140: "I undertake to say that the article for extradition of offenders contained in the Treaty of 1842, if there was nothing else in the Treaty of any importance, has of itself been of more value to this country, and is of more value to the progress of civilization, the cause of humanity and the good understanding between nations,

than can be readily computed. What were the state and condition of this country, Sir, on the borders and frontiers at the time of this Treaty? Why, it was the time when the 'Patriot Societies,' or 'Hunters' Lodges' were in full operation, when companies were formed and officers appointed by secret associations to carry on war in Canada; and, as I have said already, the disturbances were so frequent and so threatening, that the United States Government despatched General Scott to the frontier to make a draft on New York for militia, in order to preserve the peace of the border. And now, Sir, what was it that repressed these disorders, and restored the peace of the border? Nothing but this agreement between the two governments, that of these 'Patriots' and 'Barnburners' went from one side to the other to destroy their neighbor's property, trying all the time to bring on a war, (for that was their object), they should be delivered up to be punished. As soon as that provision was agreed to, the disturbances ceased on the one side, and on the other they were heard of no more. In the formation of this clause of the Treaty, I had the advantage of consultation with a venerable friend near me, one of the members of Michigan. He pressed me not to forego the opportunity of introducing some such provision; he examined it, and I will ask him if he knows any other cause for the instantaneous suppression of these border difficulties than this Treaty provision."

Will any one undertake to elevate this St. Albans outrage above the character of the misdeeds here described by Mr. Webster himself as within the express provision of the Treaty? Will any one contend that it partakes of the character of war half as much as many of those expeditions? Having now laid before the Court the view of this case which my duty compelled me to take, I shall abstain from any further observation not absolutely called for by the circumstances. I feel that any sane man—to say nothing of a grave magistrate, must be expected to caricature his impressions, before he can pronounce the act of the prisoners to be apparently an act of war in itself. I feel that whatever it could, under any circumstances have been contended to be, the peculiarity of its origin on, and emanation from, neutral territory, completely deprived it of all possible lawful character; and I feel that we shall be transcending our proper functions, and assuming a responsibility and a jurisdiction we do not possess, if we undertake to say that we will appreciate the guilt or innocence of the parties concerned, and decide that with all these questions untried and untriable before us, we will not execute this Treaty, and send the prisoners for trial where alone it can be had. It has been insinuated more than once in the course of this case, that this country is acting under fear and pressure in this matter. Such topics are not usual in English Courts

of Justice, and are far too rendolent of the hustings, and of politicians of the second table, to be welcome in these halls. If such a thing were possible indeed, as that a judge of this country should forget his duty to the Laws, from fear of any foreign power, it would be difficult to imagine a greater baseness, unless it be the baseness that dares not express; but leaves it to be darkly understood, that any man who fearlessly does his duty in such an emergency will be liable to the odious and calumnious imputation of having been swayed by unworthy motives. Allusion has been made by my learned friend, Mr. Laflamme, to what he is pleased to call, two important circumstances that have occurred during your Honor's illness. The one is the execution of Beall, and the other a letter of Lord Russell to Mr. Adams. The case of Beall was referred to, to show some fancied inconsistency between the judgment of the Upper Canada Judges and the act of the American Government. No such inconsistency exists. Beall was executed as a spy by martial law, and never was a refugee in Canada, or demanded as such by the American Government. Burley was surrendered and properly tried for the offence, or at all events is to be tried for it, for which he was so surrendered. The Judges of Upper Canada never decided that Beall, whose case was never before them, did not commit robbery; they only held that Burley did. The despatch of Lord Russell seems to be taken as a judicial decision, that the act committed on the Roanake was an act of lawful war. It is no such thing. The American Government could not apply to the Colonial authorities at Bermuda for information; they were obliged to employ the ordinary official channel, and through their minister in London apply to the Foreign Secretary for information on a point of fact, not for a judgment on a point of law. They did so, and received the proper answer that the reasons, which had been duly transmitted no doubt by the Colonial Governor, whether good reasons or bad reasons, were what they were. Lord Russell gave no opinion on the validity of those reasons in that particular case. He was not asked to do so; but merely gave the information required; and even if His Lordship had done so, he certainly did not decide that a commission of the nature of the one in the present case; still less the authority given in neutral territory, to proceed from it to perform an act of robbery was a lawful authority to do the deed the prisoners have done. I have endeavoured, as completely as time will permit, and under a feeling of the great disadvantage, in speaking after the exhaustive and able efforts that have preceded me, to place my view of this case succinctly before your Honor. To your judicial authority I now submit it, quite satisfied that far above the tempest of political passion, and still further removed from the baleful reflection of the strife raging between our neighbors, you will do impartial justice between the parties.

March 23rd, 1865.

Mr. Carter, Q. C., addressed the Court on behalf of the Crown. He said: "May it please your Honor—Considering the length of time already devoted to the argument of this case—the number of Counsel who have preceded me in the discussion of it—and more particularly the circumstance of your Honor's recent illness, rendering more arduous the performance of your duties, it is with great reluctance I rise to address you. I have therefore to solicit your Honor's indulgence for a short time, promising, as I do, to limit myself entirely to the legal aspect of the case. I have no desire to make what is called a speech, in the sense in which that term is applied to the efforts of those who aspire to be eloquent—to appeal to the sympathies, or to the prejudices of men. Such efforts might be excused, when the counsel is engaged in defense of his client before a jury, but can have no weight whatever with your Honor, in this Court. The case before you is a demand for extradition, and I feel it my duty to use my best efforts to convince your Honor, that this demand is just and reasonable; that the law you are called upon to administer, imposes upon you the obligation of committing the prisoners for extradition, and that this demand cannot be refused without violating the law of the land, and the treaty obligations of our Sovereign with a foreign government. In all civilized communities, the necessity for the exercise of a corrective power, to accomplish the suppression of crimes, and the punishment of offenders has been universally admitted; without which every thing would be anarchy and confusion. The exercise of this power is one of sovereignty; the object to be attained, is the peace and welfare of the community at large. In securing this, every individual member of society is deeply interested; the safety of his person and property, being the equivalent accorded to him, for the sacrifices he makes in contributing his share towards the maintenance of the social compact. In criminal matters, the jurisdiction is considered local, the place where the offence was committed being, as a general rule admitting of but few exceptions, the test of jurisdiction. Hence it is that as between nations, it was at one time considered the duty of a nation in whose territory the criminal may have taken refuge, to surrender him to the authorities of the other, whose laws he may have violated. This point gave rise to conflicting opinions amongst jurists; the majority being of opinion that whatever might be its expediency, the extradition of criminals could not be claimed as a matter of right, in the absence of treaty stipulations. In this case, that question does not arise, as the claim now urged is based upon an existing treaty between Great Britain and the United States of America. I now come to the consideration of this claim for extradition, and I am

reminded by that circumstance of what took place at the close of this argument yesterday. I was asked by several persons, how I could expect to find a single argument to offer, which had not been already advanced and fully discussed by the three learned gentlemen who preceded me. I feel the justice of this remark, for certainly every possible effort has been made to exhaust the subject. Without wishing, however, to be considered egotistical, I may be permitted to say, that I have still some important points hitherto unnoticed, to urge upon your Honor's consideration. They are contained in this printed document, being the propositions and authorities I have prepared in a concise form.

Here Mr. Carter handed to the Judge the propositions and quotations from authorities, and proceeded to say that he had stated to his Honor that the Treaty between Great Britain and the United States, might be considered as the very basis of this application. But his learned friend, Mr. Kerr, had considered it necessary to embody in his fifth proposition, the pretension that the United States no longer existed, because five or six States had been admitted into, and nine or ten States had seceded from the Union since the Treaty with Great Britain; and that its sovereignty had by the existence of the civil war been dissolved. Mr. Carter denied the proposition, which was altogether devoid of any foundation. The accession of territory, or the existence of civil war might affect the internal organization and government of a State, but in so far as Foreign States were concerned, did not alter its personalty, or its external relations towards them. In support of this doctrine, the learned Counsel quoted from Lawrence's Wheaton, page 39—"A State, as to the individual members of which it is composed, is a fluctuating body; but in respect to the society, it is one and the same body, of which the existence is perpetually kept up by a constant succession of new members. This existence continues until it is interrupted by some change affecting the being of the State. If this change be an internal revolution, merely altering the municipal constitution and form of government, the State remains the same; it neither loses any of its rights nor is discharged from any of its obligations."—Also page 36. 1 Phillimore, p. 139—"But a State may undergo most important and extensive changes without losing its personalty." At p. 140—"This vital principle of International law is a necessary and principal consequence flowing from the doctrine of the moral personalty and actual intercommunion of states." Halleck, p. 72 and 73—"A State, as to the individual members of which it is composed, is a fluctuating body, being kept up by a constant succession of new members; so, also, its form of government and municipal constitution may be subject to frequent alterations and

changes in the constituent parts of the body politic, and in their relations to each other do not affect the character of the body itself, in its external relations to other communities,—that is, in international law. The State remains the same political body, until its identity is destroyed by interruption in its existence as a separate and distinct society; and it neither looses any of its rights nor is discharged from any of its obligations, by any mere municipal change or internal revolution." 1 Kent's Com., p. 28—(Same doctrine.) The second proposition he would lay before his Honor was that the Treaty between Great Britain and the United States for the surrender of offenders, was not in any way impaired or affected by the existence of civil war within the territory of the latter, or by any change in its internal government. In support of this he would cite from 1st Kent's Com., p. 28—"And it is well to be understood, at a period when alterations in the constitutions of governments and revolutions in states are familiar, that it is a clear position of the law of nations, that treaties are not affected, nor positive obligations of any kind with other powers, or with creditors, weakened by any such mutation. A state neither loses any of its rights, nor is discharged from any of its duties by a change in the form of its civil government.—The body politic is still the same, though it may have a different organ of communication." The same doctrine was to be found in 1st Phillimore, p. 143. He came now to the most important consideration, embodied in his third preposition, which was to this effect:—The Queen's Proclamation of May, 1861, declaring the neutrality of the nation during the hostilities commenced between the Government of the United States and certain States styling themselves "the Confederate States of America," is the exercise of a national right, the effect of which at most, is to regard both parties as entitled to belligerent rights or privileges of commerce; but these rights must not be confounded with the rights and privileges resulting from the doctrine of *recognition*. England has not *recognized* the Confederate States as an independent sovereignty; and all courts and judges are bound to consider the ancient state of things as remaining unaltered. This principle is recognized by all jurists, and has been invariably adopted by English and American courts.

The following authorities were cited in support of this proposition:—Halleck, p. 75, 76—"The recognition of the independence and sovereignty of a revolted province by other foreign States, when that independence is established in fact, is therefore a question of policy and prudence only, which each State must determine for itself; but this determination must be made by the sovereign legislative or executive power of the state, and not by any subor-

dinate authority or the private judgment of individual subjects. And until the independence of the new state is recognized by the government of the conntry of which it was before a part, or by the foreign state where its sovereignty is drawn in question, courts of justice and private individuals are bound to consider the ancient state of things remaining unaltered." L's Wheaton, p. 47—(Same doctrine.) 1 Kent's Com., p. 27 (note)—"It belongs to legislative or executive power (according to the character of the government) to recognize the independence of a people in revolt from their foreign sovereign; and until such acknowledgment be made, courts of justice are bound to consider the ancient state of things as remaining unaltered."—City of Berne v. Bank of England, 9 Vessey, 347; the Manillas, 1 Ed. Adm. R. 1; Yrisarri, v. Clements, 3 Bingham, 432; Thompson v. Powles, 2 Simons, 194; Taylor v. Barclay, ib. 213; Rose v. Himely, 4 Cranch, 241; Hoyt v. Gelston, 13 Johnston, 139, 141; United States v. Palmer, 3 Wheaton, 610. 2 Phillimore, p. 37:—"It is a firmly established doctrine of British and North American, and indeed of all jurisprudence, that it belongs exclusively to governments to recogize new states; and that until such recognition, either by the government of the country in whose tribunals a suit is brought, or by the government to which the new state belonged, 'courts of justice are bound to consider the ancient state of things as remaining unaltered.'"

The citation of these authorities must be sufficient to establish conclusively the proposition he had submitted. But he would remind his Honor that Mr. Laflamme had endeavored to apply precisely the same principle to another proposition. He had also endeavored to draw this deduction, that the prisoners would be treated as robbers; but his Honor had not to deal with the consequences that might ensue in any country, but to deal with the case as it presented itself before him. The learned Counsel now came to his fourth proposition, which was that, applying these uncontroverted rules of jurisprudence to the case, the pretension of the prisoners' counsel, that Bennett H. Young was a duly commissioned officer in the service of the Confederate States, and hence irresponsible for the acts perpetrated at St. Albans, and that this Court was bound to take notice of that commission as proved, was an untenable one, and at variance with the jurisprudence of English and American courts. The Court was bound to disregard this commission and the evidence relating thereto, as shown by the authorities he would cite. To adopt the pretension of the counsel for the prisoners, would be the assumption by a Judge of legislative or executive powers appertaining solely to the Executive Government, and virtually to recognize (which England hitherto had not done) the

existence of the Confederate States as an independent sovereignty. This doctrine was laid down, not only by American authors and jurists, but by several decisions had in England. In L's Wheaton, p. 43 (note) it was stated:—"But it is to be remembered that in the question of belligerent rights, as of a more formal acknowledgment of independence, the decision is with the Government, and not with the Courts; and it was accordingly held by the Supreme Court of the United States in 1821, in a case as to the validity of a condemnation by a Court of Admiralty at Galveston, that, as the United States had not hitherto acknowledged the existence of a Mexican Republic or State at war with Spain, so that Court could not consider legal any acts done under the authority or flag and commission of such Republic or State." He also cited Wheaton's Reports, vol. 6, page 193; and 2nd Phillimore, p. 48.—Citing 10 Vesey, 35, 11 Vesey, 238. Dolder vs. the Bank of England. The Court refused to order dividends, received before the bill fyled, of stock purchased by the old Government of Switzerland, to be paid into Court by the trustees, on the application of the present Government, without having the Attorney General a party. In Taylor vs. Barclay, 2 Simon's Rep. 213, it also appeared that, to prevent a demurrer to a bill, it was falsely alleged in it that a revolted colony of Spain had been recognized by Great Britain as an independent State; the Court held itself bound to know, judicially, that the allegation is false, and not to give it the intended effect. A reference had been made to the case of the Roanoke, which certainly might appear at first blush to be the strongest case adverted to by the Counsel on the other side. It was a closer analogy to this case than others were, because what had been done there had been done since the commencement of the war. But he thought that there was one observation which was conclusive. That case was not a judicial decision. What was done there was this: a commission had been produced and proved, and the Attorney General said that there the case must end. That was an exercise of Executive authority, and the principles there laid down strengthened his position.

His fifth proposition was as follows:—"That viewing the circumstances under which this case presents itself, the obligation of the Imperial Government to carry out its Treaty obligations with the United States of America—its declared neutrality in the prevailing contest, which is a further pledge of its sincerity to consider these obligations intact—and the non-recognition of the Confederate States as an independent sovereignty, it becomes wholly unnecessary to discuss Mr. Kerr's propositions, that the violation of instructions by a commissioned officer renders him amenable to his own Government only, and that the other belligerent power, or a neutral nation, can-

not constitute themselves the judges of such violation. It suffices to show the fallacy in this case of such pretensions, to state that these considerations could only arise in what is called a perfect war between two distinct nations, having a separate national character and equal rights of sovereignty, *quoad* the neutral nation. He thought the mere enunciation of that proposition was sufficient without entering into a discussion of it. What was the use of the learned Counsel on the other side advancing principles which could have no bearing on the case. Even taking it for granted that the Judges in Upper Canada gave as a reason for their decision that there had been a violation or deviation of authority, it seemed to him that the Court in that case was bound to do just what he now called upon his Honor to do. Was this not a treaty with the United States, as binding upon these prisoners as any one else? The decision in the Burley case was right; the Judges were bound to consider the ancient state of things as unaltered. He now came to the second branch of his case,—Bennett H. Young's commission considered from another point of view. The alleged facts were these: The commission bore date 16th June, 1864, purported to be signed by James A. Seddon, Secretary of War. Letters of instructions, bearing the same date and signature, were produced, directing him to organize "a company not to exceed twenty in number, from those who, belonging to the service, are at the time beyond the Confederate States." Also "to proceed without delay to the British Provinces," where he was to report to Messrs. Thompson and Clay. A letter of C. C. Clay's, dated in October, 1864, addressed to Lieutenant Young, approved of his suggestion to make a raid upon St. Albans. It was proved that Mr. Clay had been for some time previous a resident at St. Catherines, in Canada. There was evidence to show that the prisoners resided in Canada prior to the 19th October, 1864, and that Young, in the fall of 1863, attended the University at Toronto. Assuming, for the purposes of argument, all these matters to be conclusively proved, their legal effect could be determined only by a careful consideration of the law of domicil by a foreigner, a subject of one of the belligerent powers, in the territory of a neutral nation; and the laws of neutrality, as affecting acts of hostility committed by him. The following propositions and authorities were submitted as conclusive:—6th. That prior to the commission of the offence charged against Bennett H. Young and his associates, the evidence established that they were domiciled in Canada, owing temporary and local allegiance to the British Crown, subject to its laws, and bound equally with all Her Majesty's subjects to a strict observance of the laws of neutrality. There was no ground whatever for the analogy attempted to be made by the prisoner's counsel, between

this case and the transient passage of troops through a neutral territory. The residence of Bennett H. Young and his associates in Canada, although temporary, stamped them with the national character of their new domicil. The presumption of law with respect to such residence, was that they were there *animo manendi*, and that they had to be dealt with in the same manner. and to be judged by the same rules, as any natural-born subject, charged with the same offence, would be. He proposed to be much briefer in the discussion of this proposition than he would otherwise have been, from the circumstance that it had been dwelt on by his learned friends who preceded him. But there was one point which he thought had not been touched upon, and to which he wished to direct the attention of the Court—that was the law of domicil and the consequences resulting from it. Vattel, b. 1, ch. 19, sec. 213, said :—" The inhabitants, as distinguished from citizens, are foreigners, who are permitted to settle and stay in the country. Bound to the society by their residence, they are subject to the laws of the state while they reside in it; and they are obliged to defend it, because it grants them protection, though they do not participate in all the rights of citizens." Also B. 2, ch. 8, sec. 101. L's Wheaton, p. 567—" Having once acquired a national character, by residence in a foreign country, he ought to be bound by all the consequences of it, until he has thrown it off, either by an actual return to his native country, or to that where he was naturalized, or by commencing his removal, *bona fide*, and without an intention of returning." Halleck, p. 701—" It follows then, that when a person who has attained his majority, removes to another place, and settles himself there, he is stamped with the national character of his new domicil ; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period." 1 Kent's Com., p. 86—" The presumption arising from actual residence in any place is, that the party is there *animo manendi*, and it is upon him to remove the presumption, if it should be requisite for his safety." He also cited 1 Phillimore p. 262, 278 ; 2 ib., p. 24. The learned Counsel next urged as his seventh proposition, that the statement made by Bennett H. Young, in his voluntary examination, as to his place of birth and his owing no allegiance to the Federal Government, was no defence to the charge preferred against him. It was the fact of his being domiciled in Canada, previous to, and at the time of, the commission of the offence charged against him, which became the test of his national character, the advantages and disadvantages of which were inseparable from it ; and in support of this he cited 1 Kent's Com, p. 85—" The same principle, that, for all commercial purposes, the domicil of the party, without reference to

the place of birth, becomes the test of national character, has been repeatedly and explicitly admitted in the Courts of the United States. If he resides in a belligerent country, his property is liable to capture as enemy's property and if he resides in a neutral country, he enjoys all the privileges, and is subject to all the inconveniences of neutral trade. He takes the advantages and disadvantages, whatever they may be, of the country of his residence. The doctrine is founded on the principles of national law, and accords with the reason and practice of all civilized nations." In the case of the Danous (cited in 4 Rob, Rep. 255, note) the rule was laid down by the English House of Lords, in 1802, in unrestricted terms; and a British subject resident in Portugal, was allowed the benefit of the Portuguese character so far as to render his trade with Holland, then at war with England, not impeachable as an illegal trade. The same rule was afterwards applied (in Bell v. Reid, 1 Maule and Selw, 726), to a natural born British subject domiciled in the United States; and it was held, that he might lawfully trade to a country at war with England, but at peace with the United States." The effect of these authorities was to show that all incursions upon a country where civil war prevail were unlawful, and were to be considered piratical incursions. Bennett H. Young's commission then was of no avail whatever, and he was amenable for this offence the same as if it was committed by one of our subjects. Why should his Honor be called upon to apply a different rule in this case to a foreigner from that which would apply to a British born subject? Both had to be dealt with in the same way. That doctrine was founded not only on law but also on equity. It was no answer in the prisoner's mouth to say, Oh, I left Canada and went to the United States to commit this act of depredation; but I am a Confederate soldier, and acted according to instructions; and what would be considered a crime in a British subject, is justifiable in my case. Such a position was altogether untenable. It was contended that Bennett H. Young was a duly commissioned officer in the service of the Confederate States, and that the policy of Great Britain had also been to afford protection to political refugees. This pretension, however, had no application to the case, as the evidence established that he availed himself of the asylum afforded to him by his residence in a neutral territory, to commit depredations in a neighboring State on terms of amity with England. These acts are to be judged by the municipal criminal code, being also prohibited by the law of nations. In support of his argument the learned counsel cited: 1 Phillimore, p. 190—"Upon the same principle, though a nation has a right to afford refuge to the expelled governors, or even the leaders of rebellion flying from

another country, she is bound to take all possible care that no hostile expedition is concerted in her territories, and to give all reasonable guarantees on this subject in answer to the remonstrances of the nation from which the exiled has escaped." At p. 191—"For it never can be maintained that however much a state may suffer from piratical incursions, which the feebleness of the executive Government of the country whence they came renders it incapable of preventing or punishing, that, until such government shall voluntarily acknowledge the fact, the injured state has no right to give itself that security, which its neighbor's government admits that it ought to enjoy, but which that government is unable to guarantee." At p. 304 was to be found the following portion of a speech delivered by Lord Lyndhurst:—"Foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects, or rather subjects of Her Majesty, and are punishable by the criminal law precisely in the same manner, to the same extent, and under the same conditions, as natural born subjects of Her Majesty." He came now to his ninth proposition, namely, that assuming that Bennett H. Young was a duly commissioned officer in the service of the Confederate States—that he came to Canada for the purpose of carrying on hostilities according to such instructions as he might receive, and that his acts at St. Albans were performed in obedience to orders conveyed by the Hon. C. C. Clay's letter of 6th October, 1864; still the pretension of his Counsel that those acts were to be regarded as acts of warfare, legitimately performed in obedience to orders he was bound to obey, and such as to entitle him to immunity as a belligerent soldier, was altogether at variance with the rules of international law. These rules furnished a complete answer to this pretension. First: that a belligerent state possessing rights of sovereignty (which the Confederate States did not) could not by commission or otherwise authorize acts, the performance of which involve a violation of neutrality and the commission of a crime. Secondly: that Young was not bound to obey such order; the order itself made in Canada being a violation of law, international and municipal, and affording no justification. Thirdly: belligerents who did not respect the neutrality of a State, commit a violation of international law. He quoted Halleck, p. 496—"No authority can require of a subordinate a treacherous or criminal act in any case, nor can the subordinate be justified in its performance by any orders of his superior." 1 Kent's Com., p. 129—"There is no exception to the rule that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful.' At page 127—"So in the case of 'The Anna,' the sanctity of neutral territory was fully asserted and vindicated

and restoration made of property captured by a British cruiser near the mouth of the Mississippi, and within the jurisdiction of the United States. It is a violation of neutral territory for a belligerent ship to take her station within it, in order to carry on hostile expeditions from thence, or to send her boats to capture vessels beyond it. No use of neutral territory, for the purposes of war, can be permitted. This is the doctrine of the government of the United States." It was declared judicially in England, in the case of "The Twee Gebroeders," (5 Rob. Rep. 373); also 3 Phillimore, pp. 334 and 337; Halleck, pp. 517 and 523; Vattel, b. 3, c. 7, sec. 133. He would also quote from pp. 16 and 17 of Leiber, on guerilla warfare. Mr. Leiber, as a matter of course, did not pretend that uniform was essentially necessary to constitute a man a soldier. On the contrary, he admitted that a uniform could make very little difference when engaged in lawful acts of war, such as a siege, &c. That was one case; but there was another which he mentioned which should not be lost sight of. He said:—"It makes a great difference, however, whether the absence of the uniform was used for the purpose of concealment or disguise in order to get by stealth within the lines of the invader for the destruction of life or property, or for pillage, and whether the parties have no organization at all, and are so small that they cannot act otherwise than by stealth. Nor can it be maintained in good faith, or with any respect for sound sense and judgment, that the individual—an armed prowler—(now frequently called a bushwhacker) shall be entitled to the protection of the law of war, simply because he says that he has taken up his gun in defence of his country, or because his government or his chief has issued a proclamation by which he calls upon the people to invest a town and commit misdeeds which other civilized nations will consider murders." Now what stronger language couldbe cited which had a more direct application to this case? What did these unfortunate young men do? Did they not disguise themselves and enter the town by stealth, that being the only way they could act. There was no authority— even a recognised sovereign could not give to Mr. Young orders to do that which was a violation of international law or that which was a criminal act. Therefore the prisoners could not be protected because they obeyed. He also cited another case in which it was laid down that "it is not presumed their sovereign has ordered them to commit a crime; and even supposing that they had received such an order, they ought not to have obeyed it,—their sovereign not having a right to command what was contrary to the laws of nature." What could be clearer than this? And yet it was pretended that Jeff. Davis had a right to order these acts, no matter what they were,

so long as the end In view could be accomplished. That argument might do in the prisoners' own country, but not before this Court. After dwelling upon this point, Mr. Carter proceeded to the consideration of his tenth proposition, that was, the charge against the prisoners. The complaint charged the prisoners with the crime of robbery, in having at St. Albans, on the 19th October, 1864, with force and violence, taken from the person of one Breck a sum of $300. Breck was a peaceful citizen, unarmed, and not engaged in hostilities; but pursuing his ordinary business avocations. He went to the Bank with this money to pay a note, and there was robbed. The prisoners' counsel had found it necessary to invoke the ancient and extreme rule, that "right of spoil or plunder extends in general to all things belonging to the enemy." But in this case, the propositions and authorities already given, established that the acts of the prisoners at St. Albans could not be regarded as acts of warfare. It was unnecessary to discuss the question, to what extent depredation and plunder might be considered justifiable, as between the belligerents. It was, however, certain that the principle invoked by the prisoners' counsel was at variance with the rules of warfare, now recognised and acted upon by nations, as shown by the following authorities; to Vattel, b. 3, ch. 9, sec. 173. 3 Phillimore, pp. 101, 3. 1 Kent's Com., pp. 99, 100, 1, 2, 3, and 4. Halleck, pp. 382, 8, 427, 456, 462. L's. Wheaton, pp. 586, 8; 596, 600, 1; 626. Lieber's Instructions, Rules, 16, 22, 25, 83, and 84. Ib., on Guerilla Parties, pp. 16 and 17. Lieber's Letter, 5th February, 1865, Trial of Beall, pp. 84 and 85. In conclusion, Mr. Carter said:—I would respectfully submit that your Honor's attention must be directed to the consideration of the following points which are respectfully submitted as conclusive. 1st—That the charge has been fully proved against the prisoners. 2nd—That although their leader, Young, claims to be an officer in the Confederate States, his acts were not authorized by any authority this Court can recognize. 3rd—That the commission he produces must be disregarded, the Court being bound to know judicially that the Confederate States have not been recognized by Great Britain as an Independent Sovereignty. 4th—That the incursion made from our territory into the State of Vermont, is to be regarded not only as a crime punishable by our municipal law, but is declared an act unlawful and piratical by international law, and hence not protected by it, as an act of lawful warfare. 5th—That the circumstances attending the commission of the act charged, irrespective of the above considerations, tested by the principles of international law, assume no other character than an act of robbery. It has been stated that if the prisoners were not extradited, the consequences might be to involve us in a war with

the United States. Such an event is possible, but I have reason to hope it will not occur. The United States have a right to expect a fulfilment of our treaty obligations—the strict observance of our declared neutrality, which prohibits our countenancing the acts of the prisoners, which are not only a violation of our municipal rules, but also of international law. I deem it my duty, however, as one of the representatives of the Crown, to disclaim all intention to urge that consideration as a ground for extradition. It is very far from being the desire of the Government, to avert the consequences of a war, by unjustly offering as a sacrifice the liberty of any man. God forbid that this should ever be the case. Speaking as a true Englishman ought to speak, I say that England, and her loyal subjects in Canada, would far sooner meet war, with all its direful consequences, than that its Judges or its Courts should become the instruments of injustice and oppression. But I do not conceal the fact that your Honor's decision is looked forward to with some anxiety—one laudable and praiseworthy, and which every nation and government should feel—the anxiety to preserve its honor and good faith in the execution of its conventional obligations, with other nations. The honor and good faith of our Government is therefore in a measure involved in this inquiry, and they will not, I feel confident, suffer at your Honor's hands.

Hon. Mr. Abbott, Q. C., in reply:—

When I review the immense accumulation of matter that has been laid before the Court during these three days, which it devolves upon me now to analyse and discuss; and the lengthy arguments entered into by the learned Counsel on the other side, to which I am now called upon to reply; the task appears of appalling magnitude. Not so much on account of the applicability to this case, of either the citations or the arguments, but chiefly because of the enormous number of authors and books which my learned friends have cast before your Honor, as I conceive almost indiscriminately, and with but little regard to their connection with the points of law arising in this case. And another, though a minor difficulty which meets me at the outset, is, that my learned friends do not quite agree upon the grounds upon which they demand the extradition of these prisoners. Some of them think, for instance, that the reasoning of the Upper Canada Judges in the Burley case was right, and some appear to think it was wrong; though as a matter of course they agree that the conclusion arrived at was the right one.

Mr. Bethune.—We never said their reasoning was wrong.

Mr. Abbott.—Well, I do not know whom my learned friend means by "we;" but as I find that the advocates for the extradition

of these prisoners, who appear here on behalf of the Crown; are not less urgent and violent than those who appear on behalf of the United States; and though differing, as I have already said, as to the meaning of many of the authorities, and as to not a few points in the case—that they all desire the same object, namely, the rendition of the prisoners;—I think I may be justified in classing my four learned friends in the same category. And when I find them disagreeing as to the law, and as to the grounds on which these gentlemen are to be sent over our lines, I think I may remark upon the circumstance as being one which is to some extent perplexing: and which adds to the difficulty of replying to their arguments.

It is not my intention however to examine the authorities my learned friends have cited, book by book, page by page, to see how far the propositions of law deduced from those citations apply to this case, or how far the propositions they profess to find there are sustained. To do so would be trespassing too much on your Honor's time; and would be implying a doubt of your fully appreciating, as you now unquestionably do, all the points in this case. But though my views of the case may be unnecessary and superfluous; to express them is a duty I owe to myself and to my clients. And though I must necessarily occupy considerable time in their development, I shall endeavor to restrict myself as much as the subject will permit me to do.

In pursuance of this object, therefore, I propose to seek among the authorities and arguments of my learned friends for those points which appear really to bear on the questions submitted to your Honor; and with regard to the remainder, I shall endeavor to show that they have no just application.

But first, I think it is my duty to place the prisoners, and the pretensions of their advocates, in their proper position. My learned friends opposite have expended a great deal of eloquence—I should rather say declamation—in enlarging upon the disadvantageous position in which this country would be placed, and upon the disastrous consequences which would result to it, if you decided not to extradite the prisoners. We have been informed that it is our duty to carry out the Ashburton Treaty; and extracts from several authors have been read to prove that we lie under such an obligation. It has been assumed that the discharge of these men would be tantamount to a declaration that persons might, with impunity, make incursions into the United States from our territory, and might return to it to re-engage in hostile operations from time to time. That by holding that the law did not justify your committing them for extradition, you would necessarily also hold that such persons had a perfect right to make our neutral territory a base for such enter-

prises against the United States; and that the maintenance of such doctrines would end in involving us in war, or in serious quarrels with our neighbors. Every one of my learned friends has urged or assumed, that you must either commit these men for extradition under the Ashburton Treaty, or approve of the attack on St. Albans; that you must hold that the attack was perfectly justifiable and legal, and not even an infringement of our own laws, even though it had originated in Canada; and that you must interpose your authority to protect the prisoners in their unlawful conduct; or that you must extradite them. But all these merely constituted some of the numerous fallacies which the Counsel opposite have placed before us, and they are not in the least degree more transparent than many of their fellows. We insist in the interest of our clients that you are bound to give effect to the Ashburton Treaty—but only in accordance with its true intent and meaning. We do not claim or argue that this attack on St. Albans was justified by the laws of Canada. We do not ask your Honor to hold, or assert that you ought to hold, that the prisoners had a right to make Canada a base of operations against the United States, or that you should protect them in organizing expeditions from Canada into the United States; nor do we argue that they should be discharged on the ground that hostile incursions from Canada are justifiable by our laws. I claim that by discharging the prisoners, you would hold nothing of the kind. A decision that the prisoners are not liable to extradition, will not involve any judgment upon the character, as regards the Canadian Government, of the act they committed; nor will it decide that the prisoners may return to the frontier-line, and engage in a similar enterprise, returning once more to Canada. Your decision will not touch any of these matters. The argument of the Counsel who opened the case for the defense was, not that you should approve of what was done at St. Albans, but that it was not within your province on this occasion to pronounce any opinion upon it; that the prisoners' Government alone had a right to deal with that matter. We say now, as before, that we neither ask your Honor to approve or disapprove of the prisoners' conduct; we are perfectly ready and willing to submit that to the appropriate tribunal when the proper time arrives. The decision we seek will not require you to declare from the bench of justice, that incursions from this country into the United States are justifiable or otherwise, or otherwise to give the sanction of your authority to any act of the kind, or your protection to the perpetrators of it. What the Counsel for the prisoners contend for is not approbation of the prisoners' conduct, but a declaration that their case does not fall within the Ashburton Treaty. We do not ask that the Treaty be disregarded; but that it be only made to apply to circumstances consistent with its intention. This is all I

propose to say on what constitutes a large proportion of the addresses of some of my learned friends opposite.

There is another part of those addresses which I propose to dismiss still more summarily, and that is the extensive vocabulary of vituperation with which we have been favored. In that kind of contest I am not disposed to engage. If the arguments of the learned gentleman to whom these remarks more particularly apply were as strong as his epithets, I should be disposed to give up the case in despair. But as I hope to be able to shew that his law is as bad as his language, I shall leave this portion of his address without further comment.

It seems to me that in order to arrive at a proper application of the principles of law which really do govern this case, it is necessary to discover what the facts are: and to that I shall first apply myself. In presenting these facts to your Honor, I shall endeavor to state them exactly and fully, not selecting a portion of a document or a deposition, and holding it up as conveying all the truth; but shewing the details of every circumstance put in evidence; the legal effect of it, and its bearing upon the merits of the case. With this view I shall go over the whole of the testimony, verbal and written, and try to place clearly and consecutively before you what it establishes. The learned gentlemen opposite deny that you have any right to enquire fully into the facts—they say that you have no right to examine them, *au fond*—that it is sufficient if a *prima facie* case be established; by which they appear to mean that you shall look only at the facts they choose to place before you: and that you shall not enquire how far the acts with which the prisoners are charged, are qualified by matters which remove them from the operation of the Ashburton Treaty. Mr. Johnson and Mr. Devlin have both urged this view; and have been so far consistent in it, that from the first they have insisted that your Honor was bound to commit for extradition, merely upon a deposition being laid before you, shewing that the prisoners had entered the bank of St. Albans, and taken by violence $300 from Mr. Breck. In answer to this pretension, I shall refer to an authority or two which I think applicable to this point, to show what I conceive to be really your Honor's duty in this behalf. These authorities are the same, which, strange to say, my learned friends have cited as supporting their view, but which appear to me to have a contrary tendency. The Chesapeake and Gerity case sare those of which I speak, and which I think establish, not that you are to try these men; but that you should find out, if possible, from the evidence before you, whether a robbery within the meaning of the Ashburton Treaty was really committed at St. Albans by these

men, as charged in the information. And the first element in this enquiry is, whether any robbery at all was committed. If it be not shown positively that there was a robbery committed—if we have not a *corpus delicti*, the case is at an end. Your Honor would not commit a man for robbery, unless you were satisfied a robbery had been perpetrated. You would require proof that some offence had been committed, before sending the accused to a trial. I deny that a robbery was committed in St. Albans, of the description mentioned in this information; or that any offence whatever was committed there, for which the prisoners are amenable to any municipal tribunal whatever. There is no disputing the fact that the prisoners were at St. Albans on the 19th October last, that they pillaged the town, set it on fire in three places, and that in the skirmish a man was killed. But I say, that pillage was not robbery, that burning was not arson, that killing was not murder. Surely these questions must be decided before ordering the extradition of the prisoners; an order whereby, if our pretensions are correct, an immeasurable wrong would be done to them which no trial in the Federal States could repair, as their only defence would be rejected as insufficient in law by any court in those States. This is the view which I submit is sustained by the Chesapeake case. At page 46 of the report, Judge Ritchie says: "*The duty of deter-* "*mining on the sufficiency of the evidence is cast on the Magis-* "*trate or other officer. He is the person to be satisfied that the* "*evidence justifies the apprehension and committal for trial of the* "*persons accused. The amount and value of that evidence is for* "*his determination.* * * * *It is a judicial discre-* "*tion with which he is vested.*" It is to be observed that Judge Ritchie was disposing of an application for the discharge of the prisoner Collins, under a writ of *habeas corpus*, one ground of which application was, that the act of seizing the Chesapeake was a belligerent act, in the interest of the Confederate States. And he is arguing that he cannot be regarded as sitting as a "Court of Review or Error," on the decision of the magistrate. Yet, he says, "if it was manifestly apparent that the evidence showed that *no* "*offence had been committed*, or that the party was unquestionably "innocent, and that, therefore, there was really no matter of fact "or law to be tried; no matter in which a magistrate could exer- "cise a discretion or judgment, then the case would be very diffe- "rent." And what would Judge Ritchie have regarded as being sufficient, to make it "apparent that no offence had been committed"; that the party was unquestionably innocent?" Such as would leave the magistrate no judicial discretion to exercise; and would compel him, on *habeas corpus*, to discharge the priosners? Why simply, that the prisoner Collins should have proved, either

that he was a subject of the belligerent State, or that being a British subject he had a commission from the belligerent State. If either of these facts had been clearly established, it is plain from his language that he would have held that there "was nothing for "the magistrate to deliberate upon: nothing for a Superior Court "or a jury to try." He shews that the evidence does not prove that Collins and his party were "acting under a regular commission," *or* "were belligerents themselves," *or* "that the expedition proceeded from the Confederate States." If any of these three conditions had been established, it is clear that he would have held that the magistrate had no right to commit: had no matter before him susceptible of the application to it of a judicial discretion. In the Chesapeake case, none of these conditions were to be found; the prisoner was a natural born British subject; and the only proof of the rank claimed, was a paper signed by another natural born British subject, who asserted himself to be a commander in the Confederate Navy; but who failed to prove that he held that rank, and still more that he had either direct or indirect authority to confer it upon other people. It is not surprising that with a case like that, Judge Ritchie felt that he could not say that the magistrate had no facts before him to justify the committal of Collins; for the seizure of the vessel was undeniable, and no legal proof whatever was offered to justify it. But how would the Judge have acted, how would he have held that the magistrate having original jurisdiction ought to have acted, if all three of these elements had been combined? If all three conditions of things were proved to exist, any one of which he held would have virtually taken the case out of the jurisdiction of the magistrate? If it had been proved that Collins was a commissioned officer of the Confederate States, *and* that he and his men were subjects of the Confederate States, nay more, enlisted soldiers of the Confederate States; *and* that the design of carrying out similar enterprises originated in Richmond; *and* that "the plot was concocted," not in St. Johns, New Brunswick, but in Chicago; *and* that the act was committed—not on the high seas, which belong to no one—but in the territory of the other belligerent itself, twenty miles from its borders. How long would Judge Ritchie have hesitated to declare that Mr. Gilbert had done wrong by committing Collins for extradition—that he had pretended to "exercise a judicial discretion," in holding the facts sufficient to warrant that commitment; when in fact "it was apparent that no offence had been committed," and that there "was no matter in which the magistrate could exercise a discretion?" Or rather, I may ask, what magistrate within this realm could be found, who would give Judge Ritchie, or any other Judge, occasion to discuss such a question?

The Chesapeake case, therefore, clearly cannot be made available for the prosecution to shew that your Honor, having primary jurisdiction in this matter, ought not fully to investigate the facts of the case, and decide, in the exercise of your judicial discretion, whether or no any such offence as that charged has really been committed.

In the Gerity case the doctrine held by the Judges seems to have been the same. Notwithstanding what Mr. Johnson has said, in regard to it, the language of the Chief Justice of England, in discussing the question whether or no there was sufficient evidence to shew that the seizure of the Gerity was made on behalf of a belligerent, entirely sustains my pretensions.

"I agree in everything Mr. James has said," (says Ch. J. Cockburn) "as to acts with the intention of acting on behalf of "one of the belligerent parties." What did Mr. James say? "Piracy depends on circumstances; and acts which *in a time of* "*peace* would be evidence of the crime, are not so *when done by one* "*belligerent against the other*." Again: "Further even *private* "*subjects* were, *so far as the enemy was concerned*, and therefore "so far as to exclude them from the class of pirates, entitled to "seize without authority from their government, property belong-"ing to the enemy." The Chief Justice adds that he "cannot say that the magistrate was not justified in committing the prisoners for trial:" but why? Because the sole evidence of their belligerent character consisted in their stating when they seized the vessel—that they did so on behalf of the Confederates. There was no difference of opinion among the Judges of England on the point under consideration, though this was not the ground upon which they were discharged. The dilemma under which that discharge became necessary is well put by Mr. Justice Blackburn. He says "the case is either one of piracy by the law of nations—in which case the men cannot be given up because they can be tried here; or it is a case of an act of warfare, *in which case they cannot be tried at all.*

It is unnecessary to reiterate here the same illustrations of the effect of the Chief Justice's views, in which on this point his colleagues agreed,—which I have applied to those of Judge Ritchie. The inference is precisely the same in both cases—and it is the reverse of that for which the prosecution contends. In that case there was but a *scintilla* of evidence of the belligerent character or intent of the prisoners: and that being of their own creation, could only be admitted at all on the ground that it formed part of the *res gestæ*. The only evidence of their acting for the Confederate Government was their own declaration to that effect when they took possession of the vessel; yet the English Judges speak with considerable hesitation in dealing with their case. They do not say—

we are of opinion the prisoners should be committed for trial; but merely—we cannot take upon ourselves to say they should not be so committed. No one can read the report of the *Gerity* case, without being satisfied that if there had been any more evidence, than the declaration of the men themselves that they were acting for the Confederate Government, the Court would have discharged them on that ground alone. It is a proof of the care and impartiality with which such questions are viewed in England, that all the Judges take into consideration the presumption of belligerency afforded by the declaration of the prisoners, though they hold it insuf ficient to warrant their interference with the jurisdiction of the magistrate who tried the case. If the prisoners had proved that they acted under an officer of the Confederate navy, under written instructions from Commodore Barron at Brest, would there have been any hesitation on the part of the English Judges in dealing with the matter? Their own *dicta* in that case; the authorities that have been cited from writers on international law—the *dicta* of judge Ritchie; of the Judge at Bermuda in the Roanoke case, which the Government of England, as evidenced by Lord John Russell's despatch, have approved of,—all show that the mere possession of naval or military rank, if not the mere national character of the aggressor as a belligerent, is sufficient in itself to justify hostilities against an enemy in an enemy's territory. And I commend this case to the attention of my learned friends opposite, not only with regard to this point, but to another raised this morning. I refer to the supposed effect of the neutral character of the aggressor: or of the enterprise having proceeded from nuetral territory. But it will be my duty to discuss this point more at length in its proper place. The rule I am now contending for has not been unknown, or unobserved in similar recent cases on this continent. There has been a case lately at Sherbrooke before Judge Short, and another before an American Judge at Detroit in which it has been recognised and acted on. In the former case Judge Short declared that he would have felt justified in ordering the taking of evidence on behalf of the defence, to satisfy himself that the offence was within the Treaty, if the prisoner had not applied for the privilege of doing so. And in the latter, the prisoner was discharged after the reception of evidence on his behalf—the evidence for the prosecution taken by itself being complete. In the Burley case, also, delay was granted to procure evidence to be placed before the Judge, as to the nature of the offence committed: and that evidence was weighed, and discussed by the Judges—though with a conclusion to which I cannot assent—and which I venture to assert will not be assented to, and and I have the best reasons for knowing is not assented to, even by Federal lawyers.

I have now perhaps devoted more time than was absolutely necessary to the discussion of this branch of the case, and I turn, as I stated I would do, to the facts—to the actual state of the evidence as regards the position of these men, and their authority for what they did. Upon these points we have had a great deal of discussion; and it is proper that they should be fully appreciated—for till we arrive at some decision upon these, voluminous citations are of little use. In reality was the act now complained of an ordinary felonious robbery, or a hostile or a political act, arising out of the unfortunate state of things now existing between our neighbors? what is the *status* of the prisoners, and who are they?—are they British subjects, as my learned friends opposite pretend?—have they acquired a domicile in this country that deprives them of their national character?—that divests them of their allegiance to their parent state?—Or are they citizens of the Confederate States? Is Mr. Young a subject and a commissioned officer of that power? are his comrades the soldiers as well as the subjects of that power? Now I contend that we have proved beyond dispute that it is the latter state of things which the evidence demonstrates to have existed.

The first document I shall refer to as establishing this point is his commission, which reads thus (p. 80) :—

CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT,
Richmond, June 16th, 1864.

SIR,—You are hereby informed that the President has appointed you First Lieutenant, under the Act 121, approved February 17th, 1864, in the Provisional Army in the service of the Confederate States, to rank as such from the sixteenth day of June, 1864. Should the Senate at their next session advise and consent thereto, you will be commissioned accordingly.

Immediately on receipt hereof, please to communicate to this Department, through the Adjutant and Inspector General's Office, your acceptance or non-acceptance of said appointment, and, with your letter of acceptance, return to the Adjutant and Inspector General the oath herewith enclosed, properly filled up, subscribed, and attested, reporting at the same time your age, residence, when appointed, and the State in which you were born.

Should you accept, you will report for duty to

(Signed) JAS. A. SEDDON, Secretary of War.

Li[illegible]. Bennett H. Young, &c., &c P.A.C.S.

This is a document which undoubtedly, by its terms, confers on Bennett H. Young the rank of First Lieutenant in the provisional [illegible]ate States of America. Well, if this is not a

commission, what is? True, it is not on parchment; it is not signed by the President, nor does it purport to emanate from the Senate of the Confederate States; it is not approved and confirmed by the Senate, nor does it bear the great seal. I give my learned friends the benefit of all these negatives; but yet it undoubtedly is genuine, and it has a certain effect. What is the effect of it?—Is it, or is it not a document which gives to Bennett H. Young the position of lieutenant of the C. S. army; I ask my learned friends opposite if Mr. Young is not entitled, under this document to the rank of Lieutenant in the provisional army of the United States?

Mr. Bethune.—I say no.

Mr. Abbott.—Who is to judge whether he is or not?

Mr. Bethune.—A jury.

Mr. Abbott.—A jury indeed! That sounds very plausible, and very well; and it would answer my learned friend's purpose admirably, to refer all these questions to a jury in the Federal States. But what would a jury in the Federal States be instructed to say? What would a Judge feel bound to tell them? I will inform the learned gentleman. The Judge would thus address the jury: "Gentlemen, the only evidence of the independence of a separate "Government, or even of its belligerent character, which you can "recognize, is the declaration of the Executive Government of "these United States. Until that Executive decides that the "so-called Confederate States are entitled to recognition as an "independent State, you cannot notice their pretensions to such a "position; for it is not for courts of justice, or Judges, or juries, to "say whether another nation, or section of a nation, is entitled to "the rights of a separate state. Therefore, as the Executive has "not declared that the so-called Confederate States are entitled to "the position and rights of a separate sovereignty, you must entirely "disregard this commission. You are bound to take the law from "me, and I tell you that the law is, that the most valid and formal "commission which Mr. Davis can issue, is as a piece of blank "paper in the eye of the law." I assert this, because I know that a jury was in effect thus charged by Judge Nelson of New York, in the Savannah case, under similar circumstances; and I believe that the charge of Judge Nelson was correct from his point of view. And it is precisely because I believe his view to be that which every Judge in the Federal States must hold, that I raise my voice with such persistent earnestness against the monstrous pretension, that your Honor is to refuse to examine this document, or to exercise your judicial discretion upon it; and that you are bound to remit the consideration of the effect of it, to a tribunal which cannot lawfully even look at it. I say that to adopt such a view, would be to disregard every principle of justice, every im-

pulse of humanity; and to degrade the position of a British magistrate, exercising freely, independently, and intelligently his learning and his judgment; to that of a hireling scribe, recording, with slavish pen, the ukases of a foreign cabinet. I say, your Honor, that it is you who now can, and must, decide this question. It is you who must say whether or no, according to your conscientious belief as a Judge, upon the evidence before you and the law, this instrument, either by itself, or followed by the other documents of record, entitled Mr. Young to the rank of a Lieutenant in the Confederate army. And you *must* decide, because that rank is an essential part of the state of things which, the prisoners claim, takes from their hands all stain of guilt; and because, if that state of things really did exist, you have no right to cause these men to be handed over to their natural enemies for execution. I say for execution; for their commitment might well be accompanied by the same solemn recommendation to the mercy of the last and highest Tribunal, as follows the last and most awful sentence of offended human justice.

The contents of this instrument render it easy to discover its effect. "The President *has appointed you* First Lieutenant, &c., to rank as such from the 16th June, 1864." So far no comment is needed. But the learned Counsel say that it is subject to confirmation by the Senate. True, so are all acting appointments subject to confirmation by the sovereign power. In our own army, and in every army, and in every navy, acting appointments are made subject to confirmation by the sovereign; but they are not subject to the imputation of nullity, either by a neutral or by a belligerent, pending that confirmation. No one would venture to assert that a gentleman holding an acting appointment in the British army or navy could be treated as a robber on land, or as a pirate at sea, because his acting appointment awaited confirmation by Her Majesty. Besides, in the present case, the intention is plain. Lieut. Young is not told that he will be recommended for appointment by the Senate; but that the President *has* appointed him. He is not told that he will rank from the confirmation by the Senate, but that he will rank as Lieut. from the 16th June, 1864.

But the learned Counsel say that there are conditions precedent to this appointment, and that there is no proof that those conditions were fulfilled. My learned friends are mistaken. There are no conditions precedent at all, and there are no conditions which affect the rank of Mr. Young, except the acceptance. He is directed to take an oath, to report his age, his residence when appointed, and the State in which he was born. If he failed to report his age, or reported it incorrectly, would he be for that reason liable to be

treated as being without rank in the Confederate army? If he were captured on duty by the Federals, and they could succeed in proving that he had not taken the oath; or if he failed to prove that he had taken it, could they hang him as an uncommissioned marauder? I ask these questions because it is sufficient to put the propositions of my learned friends in that form, to render reasoning upon them superfluous.

But my learned friends will say the acceptance is more important; that it is essential. I think myself that evidence of an acceptance of some kind, either expressed or implied, is important, but I contend we have it here in half a dozen forms. Before entering upon the evidence of acceptance, I would remark, however, that the test of Mr. Young's rank in the Confederate army, is the rank which he is recognised to hold, and which is allowed to him by the military authorities of the Confederate Government. It is not for a neutral nation or a neutral Court, to enquire how far a foreign State is justified by its own laws, either in conferring rank on its own subjects, or, what is equivalent to it, in recognising one of its own subjects as possessing a certain rank. The best judge, so far as we are concerned, whether a man holds rank in the Confederate army, must surely be the head of the war department of those States; and if he recognises Mr. Young or any one else as an officer of that army, treats him as such, confides to him as such important enterprises and an independent demand, it does seem to me impossible for us, as neutrals; or for the other belligerent, who is now an applicant before this tribunal; to deny him that position. Our Sovereign has recognised the Confederate States as belligerents. Surely we cannot deny them the right of appointing their own officers, or of deciding, in the last resort, so far as we are concerned, who are or are not their own officers.

If this be conceded,—and I do not see how it can be denied,—the matter is settled by the three letters of instruction marked N, O, R. These papers show that Mr. Young was recognised as a Lieut. in the army of the Confederate States; and they convey to him not only the power to organise a company of twenty men, but numerous instructions of a peculiarly onerous character which will be hereafter referred to. Paper N, (p. 80,) is as follows:

CONFEDERATE STATES OF AMERICA,
War Department,
Richmond, Va., June 16th, 1864.

Lieut. B. H. Young is hereby authorized to organise for special service, a company not to exceed twenty in number, from those who belong to the service and are at the time beyond the Confederate States.

They will be entitled to their pay, rations, clothing, and transportation, but no other compensation for any service which they may be called upon to render.

The organisation will be under the control of this Department, and liable to be disbanded at its pleasure, and the members returned to their respective companies.

JAS. A. SEDDON, Secretary of War.

Paper R (p. 216) says:

CONFEDERATE STATES OF AMERICA,
War Department.
Richmond, Va., June 16th, 1864.

To LIEUT. BENNETT H. YOUNG:

Lieut.,—You have been appointed temporarily 1st Lieut. in the Provisional Army for special service.

You will proceed without delay to the British Provinces, &c., &c.

JAMES A. SEDDON,
Sec. of War.

Paper O (p. 206) is as follows:

CONFEDERATE STATES OF AMERICA,
War Department.
Richmond, Va., June 16th, 1864.

To LIEUT. BENNETT H. YOUNG:

Lieut.,—You have been appointed temporarily First Lieut. in the Provisional Army for special service. You will proceed without delay by the route already indicated to you, and report to C. C. Clay, jun., for orders. You will collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, that you may deem suitable for that purpose, and execute such enterprises as may be indicated to you. You will take care to organize within the territory of the enemy, to violate none of the neutrality laws, and obey implicitly his instructions. You and your men will receive transportation and customary rations, and clothing or communication therefor.

JAMES A. SEDDON,
Sec. of War.

I submit as a perfectly unassailable and incontrovertible proposition, that each one of these documents proves that the Government of the Confederate States of America, by the head of its War Department, has recognised and acknowledged—and if we may judge by the active interposition of the President of the Confed-

erate States, and of the Secretary of State—in authenticating and transmitting to this country, the copies of these documents which were brought from Richmond by Mr. Cameron; do still acknowledge and recognise Mr. Young as a Lieutenant in their army. And that if the commission itself and any two of the other papers had been lost, and could not be proved before this Court, the remaining one, whichever it might be, would sustain my position.

I do not of course put this part of my argument in any respect upon the ground that the Confederate States are entitled to recognition by your Honor, as an independent and sovereign State, as Mr. Carter this morning assumed that we did, or that it was necessary for us to do, in order to establish Mr. Young's rank. The Government of England does not recognise the Government at Richmond as independent, but it does recognise the Confederate States as belligerents; and the very authorities cited by Mr. Carter shew that the recognition of a party to a civil war as a belligerent, involves the recognition of every right which is necessarily incidental to a state of war. Now the power of issuing commissions, of appointing officers in its own army, is certainly necessarily incident to a state of war, and to the position of every belligerent; and it is a right which we must recognise in the Government of the Confederate States. If so, we must permit that Government to appoint the officers in their army, and we must admit that it is the best judge as to those who have been so appointed. Do my learned friends presume that President Davis and Secretary Seddon do not know whether or no Mr. Young has been validly appointed a Lieutenant, taking rank from 16th June, 1864? The latter says, in writing to Mr. Young: "The President has appointed you First Lieutenant in the Provisional Army of the Confederate States, to take that rank, from the 16th June, 1864." Is that false, or a forgery? They have not attempted to urge that it is a forgery.

Mr. Bethune.—We have not said so.

Mr. Abbott.—No, they have not presumed to say so, although they undoubtedly would have said so, had there been the slightest foundation for such an imputation.

Mr. Bethune.—Have we charged any one testifying for the defense, with an untruth?

Mr. Abbott.—Yes, you have charged Mr. George N. Sanders with an untruth. One part of his testimony has been quoted by the prosecution; while another portion, which destroyed the inference attempted to be drawn from the first part, has been slighted by you as unreliable.

After some further discussion, and the disclaimer by Messrs. Bethune and Devlin, of any intention to assail the veracity of Mr. Sanders, as a witness,

Mr. Abbott resumed. My learned friend, Mr. Devlin, has appeared to rest an objection on the ground that this document did not emanate from the President direct. But no one is generally recognised as being more competent to decide whether any named official act has been done or not, than the head of the appropriate department of the public service. No one could be more competent to establish, that this particular act was done in a foreign country, than the Secretary of War for that country. I suppose we should consider the Secretary at War for England the best authority, as to whether or no such and such persons were ever commissioned by the Government, as officers in the army of that country. If we had written instructions from the Secretary at War, or even from the Deputy Adjutant-general of Militia, addressed to my learned and gallant friend, Col. Devlin, as colonel of the Prince of Wales Rifle Regiment, by his name and rank, we should have no difficulty in sustaining his action on those instructions, without requiring the production of his commission, even if his rank and the gallant regiment he commands were less conspicuous than they are. And if a foreign country or Government, whether Federal or Confederate, were to refuse to recognize his action under those instructions as an officer of Her Majesty's loyal volunteers, he would feel even more indignant, if possible, than he has shown himself to be, at the proposition that Lieut. Young is entitled to the benefit of a similar recognition. What would he think or say if he were told, we will not accept that evidence of your rank; we must have the signature of Queen Victoria herself? But really, such objections as this are the merest trifling, and are unworthy to be urged before any Court. It is necessary, however, since they have been started, to examine and to answer them, and I proceed with them, as a task which must be completed.

My learned friends have urged with considerable earnestness that we must presume that Mr. Young did not report to the Secretary of War, his age, residence, &c., &c., nor take the oath, nor accept; because they say we have not got authentic copies of these documents—and they say *de non apparentibus, et non existentibus eadem est ratio*. Now I have already shewn that none of these proceedings were conditions precedent to Mr. Young's holding the rank of lieutenant; and as they were not, and were in fact mere routine matters in the department of war, they were in no respect necessary to be produced here. The point to be proved here was not the taking of the oath by Mr. Young, the return of his age, or any of these minor formalities. The point was Mr. Young's possession of the rank of lieutenant, and that is now before your Honor. He was appointed and ordered to do what his instructions shew—and he did it. Is there any better proof of the

acceptance of an appointment than entering upon and performing its duties.

Mr. Bethune.—He should have accepted by letter.

Mr. Abbott.—Probably the letter of acceptance and the oath with the required reports were returned together to the Adjutant General. But if the acceptance was not in writing, what was the consequence? Was the appointment invalid—even though the Confederate Government were satisfied with a verbal acceptance or with one signified by deeds, not words? Surely that direction was not inserted in the interest of the Federal Government.—And if the Confederate Government chose to employ Mr. Young upon distant and dangerous enterprises, without waiting for or requiring a written acceptance of the trust they confided to him; it is not for the Federals to insist that they acted illegally by doing so. Whether Mr. Young did or did not send in an acceptance in writing or take the oath, I confess my entire ignorance. The reverend gentleman who so devotedly and gallantly incurred all the dangers of a passage through the Federal lines to Richmond, was not instructed to procure copies of these insignificant papers, nor would he be charged with such a commission if the affair were to be gone over again.

Mr. Bethune.—Nor the necessary confirmation from the Senate?

Mr. Abbott.—No, it was in no respect necessary. The Senate was not in session when the appointment was made, and the confirmation for the issue of a commission was in time at any time during its session, which lasted till long after Mr. Cameron left Richmond. If this confirmation of the Senate was requisite to entitle him to act as an officer at all, then the confirmation subsequent to the 19th October would have had no legal effect. And we should then assume that the Government of the Confederate States were mistaken in believing that Young was an officer of theirs on the 16th June; that they were entirely ignorant of their own powers as belligerents; and that we know better who were their own officers, than they do themselves. It would scarcely be a step further in absurdity, to pronounce a judgment in this cause, ordering the Confederate Government to repay to this Province the $50,000 voted to repay the St. Albans banks! We have in fact, from the Secretary of War, three documents, bearing date 16th June, 1864, in which Bennett H. Young is addressed by his official title as Lieut. Young; is given specific authority as such to raise a certain number of men to act under his orders, and is instructed where he is to go and what he is to do with those men when raised and organised. Surely this affords sufficient evidence that Mr. Young had accepted to the satisfaction of his Government, the commission conferred upon him. If he had not; would Secretary Seddon have given him this authority and those instructions; would he have conferred upon him an important com-

mand for special service; would he have sent him by a dangerous and circuitous route to a distant frontier; would he have authorised him to draw rations and transportation allowances for himself and his command—and all as incidents to a rank which he had not accepted, and actually did not possess? And if he had not accepted his commission, how was it that he assumed its duties, that he did proceed by way of the British Province to the Northern frontier—that he did report to C. C. Clay—that he did organize his command from among the Confederate soldiers within the enemy's lines, viz., at Chicago; and in fact that he obeyed his instructions in the minutest particular. There is no better settled rule of law than that the performance of the duties of an agent implies the acceptance of the authority—and in fact constitutes such acceptance; if indeed so obvious a principle requires a rule of law to enforce it. But even if the Secretary of War had chosen to give such instructions to a civilian, and to address him by a military title, and if they were acted on, would not such civilian *quoad* those instructions, have all the privileges and immunities incident to the rank in which he was acting, and was so empowered to act?

The pretension of the prosecution in this behalf is not, really, susceptible of argument. Here is a man, recognised by the Government, to which he owes allegiance as an officer—recognised as such by repeated written instructions from the highest official in the state department of that Government. And your Honor, sitting here, is asked to deny that he is such officer; you are seriously asked to say and think, that Secretary Seddon was wrong in saying that the President *had* appointed Young; that he was premature in giving him these instructions; that he had no right to place Mr. Young in command of twenty men; that the authority to Mr. Young to draw pay and rations, clothing and transportation for himself and his command, was null; and that he was premature in sending him, by way of the British Provinces, to operate on the Northern frontier of the United States with which his Government was then and is now at war! Surely it is impossible that any Court in a neutral country can assume such a position as this, and hold that official documents issued by the highest official of another State have no value at all; and that contrary to the necessary inference from these documents, conditions were imposed preliminary to giving effect to this commission, which were never performed.

The question of the validity of this commission from Mr. Carter's point of view, I shall discuss at a subsequent period of the argument. What I have hitherto said respecting it, has been entirely based on itself, and on the three documents issued from the War Department. But there has been parol testimony placed on record about this document to which I shall refer as sustaining my

views. Adjutant General Withers (p. 205), Brigadier General Carrol (p. 207), Dr. Pallen (p. 209), Mr. Cleary (p. 211), Major Wallace (p. 212), all swear in effect that the instrument, paper M, is the only form of commission used in the Confederate army, and give other information as to its nature and effect, for which I refer to their testimony.

Judge Smith.—As to the acceptance, it is said by these witnesses that the oath is returned to the department. Is there any evidence of that?

Mr. Abbott.—None, except what is to be drawn from the fact that the Secretary of War subsequently gave him his instructions as an officer.

Mr. Bethune.—Both were written at the same time and issued on the same day.

Mr. Abbott.—So it follows that because they were written on the same day, they must have been written at the same time! Surely the presumption is the other way. If there were any conditions precedent to his becoming an officer to be performed in the war department, the natural inference is that he performed them: since the Secretary of War is the head of that department, and must be presumed to know whether they were complied with it or not. And if the instructions bear date the same day as the commission, and attribute to the recipient the rank named in that commission, the presumption is not only that the instructions were subsequent to the commission, though on the same day; but also that the conditions were performed in the interval.

Mr. Devlin.—The Secretary of War says—"you have been appointed." Do you suppose he would have been informed of his appointment, if he had already sent in his letter of acceptance of that appointment?

Mr. Abbott.—Well, this is rather strange reasoning. My learned friend's logic just amounts to this—because the Secretary of War says, "you have been appointed," the inference is that he had *not* been appointed, or that the appointment was not complete.

Mr. Devlin.—No, you pretend that the instructions followed the commission—that there was a lapse of time between the issue of each. I say the instructions, on their very face, show they must have been prepared; if prepared by the Secretary of War at all; at the same moment that the so called commission was made, because he states in the instructions—"You are hereby informed you have been appointed First Lieutenant," and so forth. Would the Secretary have said on that occasion, that Young had been appointed if he had already been made aware of the fact? Why inform him three times, in three different papers, that he had been appointed?

Mr. Abbott.—The argument comes to this: The Secretary of War had so much time on his hands as to inform Mr. Young in three different documents that he had been appointed First Lieutenant in the C. S. army; whence it is quite plain that the three papers were written at the same time. Now, to my mind it seems quite plain, that if the three papers had been written at the same sitting, Seddon would not have thought of repeating the same information three times. But whether it be so or not, no presumption *against* the appointment can be drawn from the fact of the assertion of it being several times repeated. If it were so, however, the fourth paper (N) would set the matter right. It does really say—"Lieut. B. H. Young is hereby authorized to organize," &c., and does not a fourth time inform him of his appointment.

With regard to the other prisoners, we have evidence establishing their quality and position. This is to be found in part in a document to which Mr. Bethune takes much exception. This document bears the signature of the Secretary of the Confederate States of America and the great seal of those States, and was specially directed by President Davis in person, to be handed to the Rev. Mr. Cameron, whom he appointed a special messenger to bring it to this country; and Mr. Cameron swears he delivered it here in the same state as when he received it. After all this, my learned friend (Mr. Bethune) states it contains three forgeries.

Mr. Bethune.—I did not say "forgery" at all.

Mr. Devlin.—"Alterations."

Mr. Bethune.—In other words, I say it is a "cooked-up" document.

Mr. Abbott.—That is not much better than the epithet I attribute to you. Your Honor will see that the "alteration," or "cooking up," consists in this: that the document in question has evidently been copied in a very hasty manner; and being the muster-rolls of several companies in the Confederate army, it consists almost entirely of proper names, which are always difficult to copy correctly. It certainly contains many mistakes in spelling and transcription, such as "B. H." Allan, for "B. R." Allan, which has been "cooked up," by being corrected, though Mr. Allan is not in this case. In fact, your Honor will see many other names, perhaps a tenth of the whole, similarly "cooked-up." I shall take the liberty, however, of calling these corrections in the spelling of the names,—made, doubtless, in comparing the transcript with the original. At all events, those papers are certified by the proper officer to be correct; and it would be more charitable as well as more accurate to say that they were incorrectly copied in the first instance, and that in the names of two of the prisoners a very slight change was made, namely, that of one letter, as in the name of Tevis.

Mr. Bethune.—He is Fevis in both instances.

Mr. Abbott.—Oh no. There is a very slight alteration in one letter in each of the names Tevis and Swager, which the learned gentlemen opposite say were "cooked up;" from which they argue that the document affords no evidence that those names were originally on the muster-roll. In the case of Huntley, it is said that the letters required to complete the name of Hutchinson were added to the initial H. But there is nothing in the paper itself to indicate that there has been any such addition. The name is there in full, "Huntley, Wm. Hutchinson." That the document has been properly corrected, is undoubtedly the fact. But supposing my learned friends discard the letters required to make up Huntley's second name, they have the name of Huntley, which is proved to be the name of the person at the bar.

Mr. Bethune.—But he swears his name is Hutchinson.

Mr. Abbott.—You are mistaken again. He has never been sworn at all. He has been known as William H. Hutchinson instead of William H. Huntley, which is not a very extraordinary perversion of his name in a strange country, under apprehension of arrest; but whether it be or be not is of no consequence to this case. The identity of the man as William H. Huntley is proved by his passport and oral testimony, as also the fact that he is a citizen of Georgia, and a soldier in the Confederate army. It is a very strange fact, however, in connection with the charge of "cooking-up" the muster-rolls, that the parol evidence we put on record when we despaired of getting these papers, exactly corresponds with the facts on the face of those papers, although it was impossible for the Secretary of State and President Davis, while "cooking them up," to know what testimony was then being given in Montreal. Strange to say, on the muster-roll of the 2nd Kentucky Infantry, sent us from Richmond, but which we did not get till after the evidence of Withers had been taken, we find the name of Charles M. Swager, in which company his fellow-soldiers swear he was a private. If this statement is true, where was the necessity for the paper being "cooked-up" in Richmond? And how did the Richmond cooks discover what had been sworn to, since Mr. Cameron had left Canada long before Withers gave his evidence? And if the statement is false, then Adjutant-General Withers and Dr. Pallen have sworn falsely, and by some miracle, news of their false oaths reached Richmond in time to have the papers "cooked up," to endorse their perjury. The same remarks, moreover, apply to the case of Tevis. He is sworn to be in Chenault's troop of Kentucky cavalry, and the muster-roll shows he was. But we had sufficient evidence before these muster-rolls came to hand, that the prisoners were Confederate soldiers, and it is to be found in the

testimony of Allen (p. 200), Bettesworth (202), Wallace (201), Stone (203), Withers (205), and Pallen (208). This testimony is quite conclusive: yet the learned gentleman spent half an hour in trying to show that the names of the men were "cooked-up" on the muster-rolls, though those rolls and the parol evidence exactly agree—and though he and his colleague have distinctly denied any intention of disputing; and in fact could not dispute, the veracity of our witnesses.

I would now ask your Honor to look at Young's instructions, and see what their real character was. I propose to examine this affair from the moment of time Mr. Young proceeded to Richmond and got his commission, upon the recommendation of Mr. Clay, down to the time of the St. Albans raid. I propose to trace out every particular of it, and to show by the evidence of record, step by step, what was probably contemplated by the commission of Young and his mission northward; what he and his command were authorized to do, and by whom and how they were so authorized.

The purpose for which Mr. Young was commissioned may be gathered from two sources of evidence. Mr. Cleary tells us that Mr. Young went to Richmond with a recommendation from Mr. Clay for a commission, "for service within the enemy's lines, that is within the Northern States," on their northern boundary, and but for the objection of the Counsel for the prosecution, we should have had full information on this subject. Major Wallace states (p. 212) that he was in Richmond in September, and that it was then notorious there that the war was to be carried into New England, in the same way that the Northerners had done in Virginia.

We know that Young went to Richmond in May to get his commission, for we find him in Halifax in that month, about to run the blockade; we see that he was ordered on the 16th June to "proceed" to the British Provinces, which would not have been the case if he had been in these Provinces at the time; and we find him at Toronto in July, "on his return," in possession of his commission and of his instructions. If my learned friends had taken those instructions in their natural order they would have been more easily understood. The first in order is paper N (p. 80), characterized by Capt. Withers as a detail for special service; and as the detailed instructions are not contained in it, it is called a detail for secret service. The second paper is the one which my learned friends read last. It is the paper R (p. 216), which requires Lieut. Young to proceed to the British Provinces, and report to Messrs. Thompson and Clay for orders; and the third letter, paper O (p. 206), directs him to proceed "by the route indicated," that is by way of the British Provinces, and to report to C. C. Clay, Jun., for orders, giving him also further directions as to his com-

mand, and as to their organization, management, and maintenance.

These instructions appear to me fully to sustain the opinion that Lieut. Young and his party were to operate against the northern frontier of the Northern States. I am speaking of this entirely irrespective of the question whether the Confederate Secretary of War was justified in sending the prisoners here, or in giving Mr. Young those orders; or whether in obeying them Lieut. Young committed a breach of our neutrality. I am considering what really was the intent and meaning of the orders issued to him, and I contend that his commission was actually given to him for the express purpose I have indicated, by his own government; that the instructions given him in writing clearly point to that purpose; and that in what he did he was merely carrying out that purpose. The instructions produced direct him to proceed hither and to report to Mr. Clay; to raise a party of twenty men, similar to those Capt. Withers describes as being known in the Confederate service as partizan rangers, or small bodies of men acting independently. This party was to be organized within the enemy's territory from among escaped soldiers; they were to be furnished with transportation, &c., by Mr. Clay; to undertake such enterprises as should be entrusted to them; and to obey implicitly his orders. As Mr. Clay then resided near the border, the inference as to the nature of these enterprises seems plain. It could not have been in Canada that these enterprises were to take effect, for they could gain nothing by imitating Federal agents in kidnapping people for their armies. The only intelligible object in sending Mr. Young here, and in authorizing him to raise a party of this description, was to enable him to assail in some way the enemies of his country on their northern frontier. There can be no doubt the intention was to attack their towns; but whether this was to be done in one way or in another does not appear from the evidence. Whether it was intended that they should wage a guerilla warfare, maintaining a precarious existence within the enemy's borders, or whether they actually contemplated the use of our territory, cannot be ascertained from the testimony of record: though the order to organize in the territory of the enemy would seem to indicate the former course. Nor does it in fact appear whether the greater portion of Lieut. Young's command passed from Chicago to St. Albans through Canada, or through the Northern States, as only four of the number are proved to have passed through Canada. How the other seventeen reached St. Albans, is not shewn nor does it in any way appear. But I am not at this moment dealing with the question, how the matter stands between the Confederate States and the British government; nor whether the former has or has not given the latter reason to demand satisfaction for violating its territory.

If it should become necessary, I believe I can show that these questions must be answered favorably to the prisoners. I am not arguing that Mr. Clay did or did not render himself liable to be sent out of this country for having carried out the instructions of his Government. I repeat that I wish to arrive at a clear understanding of the facts before I attempt to deal with their consequences.

For these purposes then Mr. Young is required by his instructions to organise a party "within the territory of the enemy"; the party to be of twenty men, "escaped soldiers" as they are described in one place, and persons "in the Confederate service beyond the Confederate lines," as they are characterised in another. So far then I have established the appointment and recognition of Young as an officer in the Confederate army; his instructions to proceed from Richmond to the British Provinces and to report to Mr. Clay; his authority to raise twenty men from among escaped prisoners or from among persons beyond the Confederate lines belonging to the Confederate army; his directions to organize in the territory of the enemy; and to operate within the enemy's lines.

Did he obey these instructions? A short review of the evidence will answer that question.

Mr. Cleary declares that he did report himself as directed when he returned from Richmond in July, immediately after having received his commission at Richmond upon Mr. Clay's recommendation.

Mr. Bethune.—Does anybody prove he ever was in Richmond?

Mr. Abbott.—Not from having actually seen him in Richmond. But it was proved that he was in Toronto early in the spring of 1864, when he was recommended by Mr. Clay for a commission; that he left Toronto in the spring with the declared intention of proceeding to Richmond; that he was in Halifax in May on his way to Richmond; by running the blockade; that his instructions in Richmond in June required him to "proceed" to the British Provinces; and his return to Toronto in July with his commission and instructions is spoken of by Cleary and by other witnesses. These facts are sufficient to prove a side issue of this kind; and the only evidence to the contrary is that Young attended lectures in Toronto in the fall and winter of 1863.

Mr. Bethune.—And in 1864 was living in Toronto.

Mr. Abbott.—In July 1864 he passed through Toronto, reporting himself to Mr. Thompson according to his instructions. Mr. Cleary's testimony fully explains all that. But it is also proved that before the raid was planned, he was actually in Chicago, in the capacity of a Confederate soldier, combining with his brother soldiers and their friends and allies there for the purpose of breaking into Camp Douglas, and of releasing the prisoners there confined.

This was in August and the beginning of September last, within little more than a month of the attack on St. Albans. Yet the Counsel opposite pretend that Mr. Young had acquired a domicile in Canada; that he was here, as Mr. Carter says, *animo manendi;* that he had in fact lost his national character; and was a British subject for the time. Yes, they say this, although this man is proved to be a Confederate subject, actually serving within a few weeks of the raid, as a soldier of the Confederate States; and then actually engaged within the enemy's lines, in an attempt to break into an enemy's fortress, to release his fellow-soldiers.

To assert that a man who takes refuge in this country as an escaped prisoner of war; who first raised the Secession flag in his native Kentucky; who has been a soldier of the South since the breaking out of the war; who is promoted from a private to a Lieutenant, after escaping from the enemy—who goes back to the territory of that enemy to engage in a most dangerous service; prepared to peril his life to release his fellow-soldiers from duress; and not only to risk his life—but to expose himself to the most degrading of deaths; at Richmond, in June, receiving his commission and his instructions from his Government, at Chicago, in September; at St. Albans in October; was "domiciled in Canada:" that this "domicile" was the "test of his national character;" and that he became incapable of legal hostility against the Federal States—is to assert propositions of law and of fact that are neither sustained by the authorities nor the evidence; and that are revolting to common sense and to common justice. In fact they are propositions about equidistant from the law, and from the evidence. They are as little sustained by the one as by the other.

To return to the evidence at the point at which my learned friend interrupted me, I say that Mr. Cleary; who is an employé of the Department of State at Richmond, acting as Secretary to Col. Thompson at Toronto, proves that Young reported himself there, exhibited his commission, and made known his instructions, (pp. 210, 211, 216),—and that he left afterwards to report to Mr. Clay. (Cleary, p. 211.)

Mr. Young did, then, follow his instructions to proceed to the British Provinces and report to those gentlemen, and shortly afterwards we find him at Chicago, where he remained during the Convention held there. The object of the rendezvous of the Confederate soldiers at Chicago, is described by Bettesworth and Stone, and they give us details of the proceedings of Lieut. Young in preparation for the attack of St. Albans. We all know the enterprise contemplated was not carried out; the Federals got wind of the affair; the guards at Camp Douglas were doubled, and other circumstances intervened to prevent the attack. But this was the

time and place at which the raid on St. Albans originated. The enterprise then planned is described and proved by Bettesworth and Stone.

Mr. Bettesworth is the person who was arrested without a warrant, on a charge against him at Quebec, on suspicion of being one of the discharged prisoners. After proof had been made before Mr. Maguire that he was not one of them, he was transmitted in custody to Montreal, where he arrived on Friday morning, and was consigned to the gaol—still without a shadow of a charge against him, and retained there among common malefactors, till the following Tuesday, when the Counsel for the prosecution, stating that they had no charge against him, called him out of the dock into the witness box. They doubtless hoped that his intimate relation with the prisoners during eight days of incarceration, had led to confidences which they could force him to disclose; and the idea was certainly ingenious—if not remarkable for its delicacy or humanity. On cross-examination Mr. Bettesworth tells us (p. 138) that during the convention at Chicago in August last, there was an organization going on there for the release of the Confederate prisoners at Camp Douglas, in which Young and Spurr took part. He was aware that a raid was being then organised there for the purpose of plundering and burning the Northern towns on the frontier—and that Young and Spurr were engaged in that organization. And when afterwards examined for the defence (p. 201), he proves that the fact of Young having a commission, and of his collecting a party with the authority of the Confederate Government for a raid on some point of the Northern States, which he was to lead, was then perfectly well known among the Confederates in Chicago. He further proves that arms and material of war were stored in Chicago for such purposes, and that these raids were intended to serve the Confederate Government, and not any private object.

Mr. Stone (p. 203) is still more explicit. He was also with the party at Chicago, and he was aware there of the organization and of the whole plan of operations. He was applied to, there, to join Young's party, by Young himself. He knew that Young was to be the commander of it; he was shown the instructions to raise it; he was aware that when it was collected, a report was to be made to Mr. Commissioner Clay, whose instructions were to be their guide. And finally he knew that the requisite men had been obtained, and that St. Albans was the point aimed at.

This is actually all the evidence of record, with reference to the place where this expedition was organized; and I would like now to be informed where my learned friends opposite find the proof of what they one and all assert with such vehemence, that this St. Albans raid was organized in Canada. Where is there in the

depositions in this case, a scintilla of evidence—anything even from which any inference can be drawn—that a single man of this expedition was engaged in Canada; that the party was organized in Canada, or that anything in regard to the matter was done in Canada, beyond Mr. Young's communicating with Mr. Clay. Mr. Johnson asserted in his speech lately, that this expedition was "authorised in Canada, proceeded from Canada, and returned to Canada." I venture to say the whole tenor of his argument was to that effect; and the substance of the whole of the arguments of the learned gentlemen opposite, but especially that of Mr. Devlin's speech, was, that this expedition was organized in Canada.

Mr. Bethune.—I said so, and repeat it.

Mr. Abbott.—Then I ask my learned friend upon what evidence he made, or now repeats that assertion? What is the organization of an expedition of this kind? Does it consist in the issue of the commission of the commander? If it does, this was organized in Richmond. Does it consist in the instructions to raise a party for the purpose of entering upon it? If so, this again took place in Richmond. Or does it consist in the arrangement of the plan, and in the engagement of the men to carry it out? But this all took place in Chicago. And this in fact is really what is understood by the organization of such an expedition. The evidence on this point is in the most positive terms language is capable of; and so far as the evidence of record goes, we have nothing to shew that Young and his men ever met again, till they reached the rendezvous at St. Albans. The party was composed of "Confederate soldiers who had escaped from the enemy," (papers O and R,) it was "organized within the territory of the enemy," (paper O,) as Stone has said "for an expedition against the town of St. Albans," and, as is sworn by Bettesworth, for an attack on some part of the Northern frontier of the United States. They perfectly agree; Bettesworth did not know the precise point of attack as settled in Chicago, but Stone did. Was that organization or was it not? If that be organization, and I contend it is, if the word means anything at all; all that is comprehended in it, was done in Chicago.

Mr. Devlin.—Do you argue that before Young received instructions from Mr. Clay, it was competent for him under his previous instructions, to organize a party to attack St. Albans?

Mr. Abbott.—Certainly.

Mr. Carter.—Will you state where Young, was when he suggested to Mr. Clay the raid on St. Albans?

Mr. Abbott.—Whether Mr. Young had any precise instructions from Mr. Clay or Secretary Seddon before he organized his party we do not know. The evidence is that Mr. Young was sent here under circumstances and with instructions which indicated an

intention to attack the Northern frontier of the Federals; but we do not know the precise nature of his private instructions, being aware only that he was to report to Mr. Clay, and take details from him. The well defined nature of Young's intentions when in Chicago, lead to the inference that he knew what he had to do, either from Mr. Clay or Mr. Seddon,—but whether he did or not, he had a perfect right to exercise his judgment in selecting his point of attack, so long as he was careful to get that selection approved by the proper official before he acted on it. He knew that the intention was to attempt to carry the same kind of warfare into the Northern towns which was practised in the Southern cities by Northern troops. And the expedition to St. Albans was suggested and planned by Mr. Young himself, and Mr. Clay, under the authority given him by his Government, approved of it, and required it to be carried out. The direct written authority for this particular act received from Mr. Clay is to be found at page 209 of the printed evidence, being paper marked P.

It is as follows:

"*Mem. for Lieut.* BENNET YOUNG, *C. S. A.*"

"Your report of your doings under your instructions of 16th June "last, from the Secretary of War, covering the list of twenty "Confederate soldiers who are escaped prisoners, collected and "enrolled by you under those instructions, is received.

"Your suggestion for a raid upon accessible towns in Vermont, "commencing with St. Albans, is approved, and you are authorised "and required to act in conformity with that suggestion.

"October 6th, 1864.

"C. C. CLAY, JUN.,
"*Commissioner C. S. A.*"

The evidence of Dr. Pallen (p. 209) and of Mr. Cleary (pp. 210 and 211) prove the genuineness of this paper, and if more were wanted, there are numerous circumstances confirmative of it in every respect. Mr. Cleary (*loc. cit.*) was informed by Mr. Clay himself a short time after the raid occurred, that he had authorised it, and that his authority was in writing. Mr. Lewis Saunders (p. 217) was present at conversations between Mr. Clay and Lieut. Young after the return of the latter from Chicago, in which the burning and pillage of St. Albans were discussed; and he knows that Mr. Clay advanced Lieut. Young $400 for the expenses, as the instructions authorised him to do.

Your Honor will perceive how perfectly consistent all this evidence is with itself,—Mr. Young reports his doings and his list of twenty men, enrolled at Chicago; and he makes his suggestions for the raid on St. Albans. All of which is in exact accordance with the

proof as to the proceedings at Chicago. And all this is in conformity with his instructions from Mr. Seddon.

Mr. Clay says, Your report and muster-roll are received with your suggestion, and you are authorised and required to act in accordance with that suggestion; and he furnishes the means of transportation, &c., accordingly. And all this is consistent with the functions of Mr. Clay as indicated by the instructions from Mr. Seddon.

Paper P is, no doubt, a formidable document, and my learned friends feel they must use some extraordinary means to get rid of it. For my part, I cannot say that I consider it essential, for I should be perfectly prepared, if this paper were not here, to show by authority that could not be disputed, that, under the commission held by Mr. Young, he had a perfect right to sack and burn St. Albans. But I am saved that trouble, being able to produce the specific authority given to the commander of this party by the diplomatic agent of his Government, under the authority conveyed to him by that Government, in the instructions he held and has proved before your Honor. My learned friends treat this paper very characteristically. Mr. Devlin volleys forth voluminous enquiries about the gentleman who signed it. He demands in indignant tones where C. C. Clay is? and, attracted apparently by the alliteration, he continues, Where does C. C. Clay, junior, come from? "Where does C. C. Clay, junior, reside?" "Where did C. C. Clay, junior, go to?" "Why did C. C. Clay, junior, go away?" "Where did C. C. Clay, junior, get his authority?" and so on through all the letters of the alphabet. But, lastly, and it is a question in which the learned gentleman takes a peculiar interest; he asks "What did C. C. Clay, junior, do with the money?" Mr. Bethune takes a different course. He says this letter or commission is a letter of marque, and that no power under heaven can issue letters of marque in a neutral country. And he says the date of the document is not proved, for *actes sous seing privé* have no date. Now, I dispute both his propositions. I say it is not a letter of marque, and moreover I say that letters of marque may be and have been issued in a neutral country. I do not say that those letters of marque were legally issued *quoad* the neutral, but I say that their validity could not be disputed by the belligerent against whom they were directed; and that the parties who sailed and acted under them could not be held to be pirates. It is a well known historical fact that Genet, an ambassador of France to the United States, issued at Washington numerous letters of marque and reprisal, even before he presented his letters of credence; and what was the consequence? Were the holders of them declared to be pirates? Not at all. Genet was ordered to leave the country, which he did;

but no one ever pretended that because he was temporarily residing in the United States when he issued them, they were such an absolute nullity that those acting under them were pirates. But the document in this case is in reality no letter of marque, and bears no analogy to such a letter.

Mr. Bethune.—Will my learned friend point out any case in which Genet's privateers were declared not to be pirates?

Mr. Abbott.—I state that Genet did exercise that authority as representing the French Government, and that he was sent out of the United States because he did so; and I say further that no person who acted under those letters of marque was ever charged with or convicted of piracy.

Mr. Johnson.—That means that no English vessel ever caught one of those pirates and took him prisoner.

Mr. Abbott.—What I state is a simple fact, that instead of Genet being extradited, he was merely ordered out of the country; and I say further, that while historians and writers on international law have discussed the conduct of Mr. Genet, and declared it to be illegal, no *dictum* is to be found in any of them to the effect that acting under those letters of marque, destroyed, in privateers holding them, the character of belligerency. Now with regard to the date of the document, I refer the Court to the case of Hayes against David, where this doctrine of an *acte sous seing privé*, having no date, is discussed and settled. The Court of Appeals, in that case, took the view that in the absence of proof of fraud, the presumption was that the date of document was correct. But this being a criminal matter, English laws must be referred to; and if your Honor requires authority from that law to show that the presumption is that all documents were made on the day they bear date (1 Taylor, p. 153), I can produce it. (His Honor was understood to dispense with any further authority on this point.)

Mr. Johnson, in his turn, gives us his particular view of paper P; and it consists in a vehement burst of indignant declamation at the usurpation by Mr. Clay of the functions of our most gracious Sovereign!

So far as the genuineness of the paper is concerned, however, we are not left to mere presumption: we can trace it back to the period of the raid itself; for Mr. Cleary swears that immediately after it occurred, Mr. Clay informed him that he had authorized it in writing; and that the authority was in my hands.

Mr. Bethune.—Do you call that evidence?

Mr. Abbott.—I say it is perfectly good evidence. I say that no better evidence could be produced touching the antiquity of a paper, than that at the time of its date the alleged writer of it described it to a third party, and stated where it was to be found;

and that it was found, and answered the description given of it by its author. When Mr. Cleary came to Montreal, two or three months ago, having been told—as he was by Mr. Clay himself—that this written authority existed, he asked for it, and found it to correspond with the description he had received of it. What becomes, then, of the suspicion attempted to be cast on this document? If my learned friends had adduced any evidence, however slight, tending to show that this paper was antedated, there would have been some reason for their objection; but in the absence of conflicting testimony, the circumstances seem to me to be conclusive in favor of the document, independent of the presumption which arises from the purport of the document itself. My learned friends opposite, however, have laid a great deal of weight upon a part of the evidence of Mr. George N. Sanders, notwithstanding their disclaimer of any imputation upon the veracity of our witnesses. But his deposition is either to be taken as it is, or not at all. Speaking in relation to one sentence in his deposition, they say he is a gentleman incapable of saying anything incorrect; but in relation to the next, they say, or intimate, that he has been swearing what is not true.

Mr. Devlin denied he had ever said so. On the contrary, he had him under examination on two occasions, and he had never met with a more truthful witness.

Mr. Abbott.—Mr. Devlin will recollect that he said, that when Mr. Sanders had his attention called to the fact, that he was saying something about paper P, damaging to the prisoners; he endeavored to remove the impression by stating that the document he referred to was not paper P, though previously he had evidently been referring to it.

Mr. Devlin.—It was you who threw doubt on Mr. Sanders' word, not I.

Mr. Abbott.—Then you admit that his testimony is true?

Mr. Devlin.—Yes.

Mr. Abbott.—Very well. Mr. Sanders says in his examination, (p. 213) that Mr. Clay told him, a few days before he left, that he would leave such a letter as paper P, which he (Mr. Sanders) inferred had not been written up to that time. * * * But he says afterwards, upon being asked to look at paper P, and at the date especially, "I say the conversation I had with Mr. Clay had no reference to this paper." If the learned gentlemen opposite admit that Mr. Sanders stated the truth in his deposition, we take it as it is, and thus dispose of any objection arising from it against this paper. But if they say that this (Mr. Sander's) conversation with Mr. Clay did refer to this paper, they virtually charge Mr. Sanders with swearing falsely, which they disclaim most emphatically. But, in

reality, no part of Mr. Sanders' testimony impeaches this paper. He states that Mr. Clay was to "write a letter, assuming all the responsibility of the St. Albans raid." Now, you will perceive this is not a letter at all, nor does it purport to assume the responsibility of the St. Albans raid. It is simply a formal official memorandum, containing authority to act—not recognition or assumption of an act previously done. It does not correspond with the description given by Mr. Sanders, of what Mr. Clay intended to write. But Mr. Clay did in fact write such a letter; and if my learned friends will call at my office, I will show them the letter which Mr. Clay wrote, assuming the responsibility of the St. Albans raid.

Mr. Devlin.—Why did you not produce and prove it?

Mr. Abbott.—Simply because a letter writen in December, assuming the responsibility of this raid, would be of no legal value. If I had produced this writing, I should have been subjected to a more extensive volley of questions than was actually discharged at me by my learned friend, Mr. Devlin; for he would have been entitled to demand with more reason, and, doubtless, with a corresponding increase of vehemence, "Who gave C. C. Clay, jun., power to ratify in December the raid of October 19th?"

This reminds me that my learned friend is anxious to know something about Mr. Clay. Now the evidence of record answers all of my friend's questions, that are material to this investigation. It proves that Mr. Clay was Senator for Alabama in the Confederate Senate, and was accredited here by the Confederate Government in the spring of 1864, as a diplomatic agent; not an ambassador recognized by our Government, because we do not yet recognize the Confederate States as an independent established sovereignty, and therefore do not receive ambassadors from her; but a diplomatic agent, such as the Confederate States and all states have a right to send to any country, and to entrust with such functions as they may deem suitable.

Mr. Bethune.—What is the evidence as to his powers?

Mr. Abbott.—I have the misfortune not to hold a copy of Mr. Clay's commission, but I have in my hand evidence both verbal and written of the *de facto* possession and exercise by him of the powers and duties of a diplomatic agent in this country; and I have in writing the order of the Department of War of the Confederate States to Lieut. Young, to obey such orders as Mr. Clay might give him, which necessarily implies authority in Mr. Clay to give such instructions to Lieut. Young as he may think proper. I have read the instructions (paper O, p. 206) given to Young, by which he is directed, in the clearest manner, to report to Mr. Clay in Canada, and to take his instructions from Mr. Clay

as to what he was to do with his party when he had raised it, and as to the enterprises he was to undertake in the performance of his duty in command of that party; and he was directed "implicitly to obey those instructions."

I would like to know, with respect to the operations of Mr. Young, what further authority to Mr. Clay was required, as between the Confederate Government and Mr. Young, than is contained in this paper. I would like to know, from any analogy to any law, still more from the direct authority of any law or precedent, in what respect this evidence of authority in Mr. Clay to give instructions to Mr. Young is defective. My learned friends pretend that it is. I ask then, in what respect and for what reason? The test of the authority of an agent is the binding effect of his acts upon his principal. In this case a written paper is issued from the Confederate States War Department, addressed to Mr. Young as an officer of the Confederate States army, directing him to report to a person, proved, by four witnesses, to be acting in the capacity of diplomatic agent of the Confederate States, and directing him to obey implicitly that agent's orders. The agent gives orders, and they are acted upon; and there can be no doubt but that the Confederate Government is responsible for them. Such evidence would be conclusive against the Confederates, if our Government turned upon them, and made Mr. Clay's giving orders to Mr. Young in Canada, a subject of complaint. Those States could not escape from their liability to give us satisfaction (if those orders were really just cause of complaint) by saying that although they had ordered Lieut. Young to go to Mr. Clay to receive instructions from him, and to obey them implicitly; yet that they had not ordered Mr. Clay to give him those instructions.

But in further reply to the enquiry who Mr. Clay is, we have the evidence of several witnesses. Adjt. Genl. Withers (p. 206) says he was Senator for Alabama; Dr. Pallen (p. 209) knows that he was a Commissioner of the Confederate States of America; Mr. Cleary (pp. 210–11) knows him, and says he was an officer of the Confederate Government, that he was appointed by that Government a Commissioner abroad,—and that that was position in this country. "I am personally aware of that fact," says Mr. Cleary. And at p. 212 he adds, "the said Mr. Clay "was both a civil and military officer. He made his reports to the "State Department, which was the civil department of the State; "but he had ample powers both civil and military: but he had no "rank in the army." And Mr. George N. Sanders informs us (p. 213) that Mr. Clay "was then exercising the authority of a Con- "federate agent, claiming full ambassadorial powers, as well civil "as military."

With such information as this before him, I think that my learned friend, Mr. Devlin, might have spared us the reiteration of his first question. Or, if he felt it essential to the interest of his clients, or to the contour of his periods, that he should ask it so often, or ask it all; that he might have answered it also.

The other questions respecting Mr. Clay may be as easily and more shortly answered. He came down to Montreal at the time of the trial before Mr. Coursol, to give his evidence, if necessary, on behalf of the prisoners, and he remained in Canada till they were discharged. And he was heard from, by Mr. Cleary, at Halifax, in the end of December last. I regret that I cannot further gratify my learned friend's curiosity; and that I am unable to give him any further information about Mr. Clay, nor, in fact, about either "that money," or the famous carpet bag, which was supposed to contain it.

I think therefore, that without fear of contradiction, I may safely assert, that we have proved that Lieut. Young did receive instructions from Mr. Clay, as Confederate Commissioner, both verbally and in writing, to make the attack upon St. Albans; and also received from him funds for the expenses of the expedition. With reference to the attack itself, your Honor will recollect that the only trace we have of the party from the time it was organized in Chicago, and arrangements made to attack St. Albans, is the appearance of Young at Mr. Clay's house at St. Catherines, when he reported himself and party; and on the train from Toronto; and that of himself and three others of the party at St. Johns, in the beginning of October. That is the only evidence to support the often repeated assertion that this party of twenty-one were organized in Canada, and proceeded from Canada. Where is the proof that the other seventeen proceeded from Canada? And if there be no proof of it,—and I assert there is none,—by what right is it that my learned friends reiterate it so persistently? In fact this is all we hear of the expedition till we learn from Mr. Bishop and the other St. Albans witnesses, of their having taken possession of the town. As to the attack upon St. Albans, the facts seem to be simply these: The party appears to have met at St. Albans at a preconcerted time. In the middle of the afternoon they took possession of the town at several points, at which they placed pickets; they seized upon several of the leading citizens whom they placed under guard in the principal square; they set fire to the town in several places; seized upon three of the banks, and pillaged them; and, while so engaged, took from Breck a bundle of notes, which he brought into one of them in his hand. All these acts, from beginning to end, they declared themselves to be doing as Confederate soldiers, in retaliation for outrages committed by Northern soldiers in the Confederate States.

Mr. Bethune.—Did they take away any prisoners?

Mr. Abbott.—No, they did not. They took possession of the town, pillaged, and, as far as they were able, set fire to it. If they could have done so, they would, doubtless, have burnt the whole of it. They did as much mischief as they could, till driven out by the citizens. My learned friends are difficult to please. They have favored us with glowing denunciations of the outrages committed by the raiders; yet they now seem to complain that the dignitaries of St. Albans were not bundled upon bare-backed horses, and hurried into Canada. If they had been, we should have had outcries from them, which would, if possible, have surpassed in vehemence those of my learned friends; and I have no doubt their feelings would have been at least as acute. But I say that a town of 3,000 or 4,000 inhabitants, twenty miles within the lines of a hostile frontier, offers many difficulties to its capture by twenty men; and that it is not surprising that, having held this town half an hour; having done their best to burn it and injure its institutions, they should be driven from it by the citizens. Nor is it astonishing that one man was killed in the skirmish. And this is the horrible murder—the frightful slaughter—that my learned friends on the opposite side talk so much about. And I presume that it was with reference to this that they cited their authorities from Vattel and Halleck, to prove that assassination was not recognized as being lawful, under the law of nations! They deny that the prisoners were fired at. The facts are stated by a witness we brought here (p. 215); and he has since been arrested and put on his trial for treason, for so stating truthfully in evidence; who tells us that he followed them along the street for a quarter of a mile, firing a revolving rifle at them as fast as he could, and that other citizens did likewise. We have also proof of numerous shots being fired and reports heard; and from the description of the whole scene, even by witnesses determined to say as little as they could, and from what we know must have occurred under such circumstances, it is plain that the citizens rose in every direction, and that the little party was driven from the town by overwhelming numbers. And it was in the midst of this confused street skirmish that Morison was shot. If we had been in a position to give evidence of the fact, we could have proved that the prisoners were driven out of the town, with three men wounded, one of whom languished for weeks in Montreal under surgical treatment, and we know that the casualties on the Federal side consisted of one man killed, and one man wounded; both in the street, in the exchange of shots between the hostile parties. This, I repeat, is the horrible murder, and the nefarious robbery and pillage on which my learned friends opposite have expressed themselves so forcibly, and which they have

denounced as something perfectly unprecedented in atrocity. What! they say, burning and pillaging an undefended town and unresisting citizens, a hostile act! Such a doctrine was never heard of! None but Southern felons and rebels could possibly be guilty of such; and from crimes like these, offences against the laws of nature and of nations, the enlightened and humane principles of international law, now observed by all civilized nations, withdraw the shield! This, we are told, is not a raid. Pillaging banks, and setting fire to the town, are acts which are not covered by instructions to make a raid! I do not know what kind of harmless military evolution is conveyed by the term "raid" to the minds of my learned friends; but it is plain that they require enlightenment on this point, and I will undertake the task of instructing them. I will read to them from a Federal book a description of a Federal raid. A raid, which my learned friend Mr. Bethune, I presume, will consider an act of war, and, perhaps, even an act of war *per se* —a kind of act of war of which we have heard a great deal both from him and Mr. Johnson. No doubt the last named gentleman will be pained, yet amused, at the "ludicrous extravagance of the pretence," that in going to a peaceable village in the middle of the day," and "easing" the old ladies of their chairs and tables, their cooking utensils and their bedroom furniture, the persons of whom I am about to speak "can be presumed or believed to have acted as "a military force—having lawful authority from a brave and civi- "lized people for what they did." Those notions of "warlike achievements and martial glory," which he has formed, will receive another shock, when he learns how the Federals, whom he doubtless believes to be models of modern belligerents, carry on warfare. Unless, indeed, he adopts the doctrine of Counsellor Sowles, (page 145), who being examined professionally for the prosecution, gives his opinion as a counsellor-at-law, that the act charged against the prisoners, if done in Georgia by Federal soldiers, under a Federal officer, would not constitute robbery—because, he says, Georgia is a State in rebellion against the United States, and Vermont is not. Indeed, the adoption of this view of the law by the Counsel for the Crown, would not be more remarkable than the mode in which "watching the case for the Crown," is exemplified by their speeches.

But I must proceed with the description of what a "raid" is, as practiced by my learned friends' clients. I shall read from No. 42 of the Rebellion Record, a New York publication, of respectable character, which I perceive was frequently referred to for information in New York, on the trial of the crew of the Savannah. The expedition I speak of was commanded by Mr. Montgomery, a Federal officer, who is said to have proceeded up the Altamaha river to the

village of Darien, on the 11th June, 1863, with a party of negro soldiers "to present his compliments to the rebels of Georgia." No motive is stated to have existed for this raid, nor does any order appear to have been given for it by any officer of rank. Darien was a town of about two thousand inhabitants; and as Montgomery approached it in an old East Boston ferry-boat, promoted to the rank of a gun-boat, he threw shells into it which drove the inhabitants "frightened and terror-stricken in every direction." Not an armed person appeared to dispute his landing or offer any resistance.

"Pickets were sent out to the limits of the town. Orders were "then given to search the town, take what could be found of value "to the vessels, and then fire it. Officers then started off in every "direction, with squads of men, to assist. In a very short time "every house was broken into, and the work of pillage and selec-"tion was begun. * * * * Soon the men began to come in "in twos, threes, and dozens, loaded with every species, and all "sorts and quantities of furniture, stores, trinkets, etc., etc., till "one would be tired enumerating. We had sofas, tables, pianos, "chairs, mirrors, carpets, beds, bedsteads, carpenters' tools, coopers' "tools, books, law books, account books in unlimited supply, china "sets, tinware, earthenware, Confederate shin plasters, old letters, "papers, etc., etc., etc. A private would come along with a slate, "yard stick, and a brace of chickens in one hand, a table on his "head, and in the other hand a rope with a cow attached. * * * "Droves of sheep and cows were driven in and put aboard. * * * "Darien contained from seventy-five to one hundred houses—not "counting slave cabins, of which there were several to every "house, the number varying evidently according to the wealth of "the proprietor. One fine broad street ran along the river, the "rest starting out from it. All of them were shaded on both sides, "not with young saplings, but good sturdy oaks and mulberries, "that told of a town of both age and respectability. It was a "beautiful town; and never did it look both so grand and beauti-"ful as in its destruction. As soon as a house was ransacked, the "match was applied, and by six o'clock the whole town was in one "sheet of flame. * * * The South must be conquered inch by "inch; and what we can't put a force in to hold, ought to be "destroyed. If we must burn the South out, so be it. * * * "We reached camp next day, Friday, about three p.m. The next "morning the plunder was divided, and now it is scattered all over "camp, but put to good use the whole of it. Some of the quarters "really look princely, with their sofas, divans, pianos, etc."

This was a raid! and what is more, it was a Federal raid! and what is more still, it was described in detail to the Federal people

with pride and exultation, as a "bold, rapid, and successful expedition." To an impartial eye it certainly does not present many of the features of boldness—nor would it seem to possess those characteristics of "warlike achievements and martial glory" of which my learned friend has spoken, and which according to the tenor of his argument would have to be present in every hostile act, to save the belligerent from the punishment of a felon. The whole affair seems to have been the idea of an officer in command of a regiment; and his "programme" is coolly stated to be to carry off all he could, and burn and destroy the remainder. He takes with him a small vessel for the purpose of carrying away the spoil. He enters a peaceful village from which most of the inhabitants have fled, and where he met with no resistance; he sacks every house, carries off everything worth having, and burns and utterly destroys every building in it of every kind and description. I hope my learned friends now understand what a raid is—and how far the instructions of Mr. Clay to make a raid on St. Albans, authorised the pillage of three banks, and of the complainant, Mr. Breck. If danger and deadly strife be elements of a hostile act, I must be permitted to claim for the attack on St. Albans a more perfectly warlike character than that upon Darien possessed. If the test is to be the extent to which wanton destruction and pillage of private property were carried, I cheerfully yield the palm to the "warlike achievement" of the sacking and burning of Darien, and freely admit that Mr. Montgomery acquired thereby more "martial glory" than fell to the lot of Mr. Young.

The sacking and burning of Darien gives us an excellent practical exemplification of the doctrine of the Federal States as to what constitutes an act of war. And it forms the best possible commentary on the scorn, the indignation, and the horror, which the learned Counsel have been at such pains to express, at the comparatively insignificant injuries inflicted by the prisoners upon the town of St. Albans. I say that I can find the record in this book of a thousand times worse acts than the St. Albans raid, committed in a thousand instances in the South, by Federal troops, since this was began.

Mr. Devlin.—That is beside the question.

Mr. Abbott.—If the character of the raid is beside the question, why has my learned friend urged with such vehemence as an argument for the extradition of these men, that their acts in the raid on St. Albans were atrocities prohibited by the laws of war; unprecedented in modern warfare; and so repugnant to the principles which regulate the conduct of nations during war—that the municipal law, which is usually silent *inter arma*, must be aroused to wreak its vengeance upon their perpetrators. If my

learned friend's argument was worth anything, my reply destroys it. If it was worthless and "beside the question," he should not have used it.

FRIDAY, March 24th.

Hon. Mr. Abbott, resuming his argument before Mr. Justice Smith, said :—In my address of yesterday I endeavored, with as much care and impartiality as I was capable of, to go over the evidence bearing upon this case. It seemed to me that upon the evidence must chiefly depend the effect of the principles of law, that have been cited as being applicable to it. These citations have been numerous and extensive; and if they have appeared to conflict, it is chiefly because one party quote the general rules as establishing his case, omitting the discussion of the exceptions as being unnecessary; while the other insists that the exceptions alone apply and has cited them only. To arrive at the real state of the law upon the facts proved, it therefore appears to me to be necessary that the authorities on both sides should be taken together. The general principles of law applicable to circumstances of the kind under consideration, have been set forth by my learned friends on this side. The learned gentlemen opposite, however, have endeavored to make out that there were exceptions to those general principles, and that this was one of them. Now it is to the examination of the question whether there are such exceptions, and if there be, whether the circumstances of this case fall within them; and again if they do, to what extent they affect the abstract rights of belligerents, that I shall chiefly address myself to-day. I think I shall be able to show that in one sense there are exceptions to the incontestable rules of law as to belligerent rights, as we have laid them down; but in another sense, and in that sense in which those rules are to be applied to my clients, there are no such exceptions. I admit that there are certain customs of war usually observed among nations in time of war, adopted to soften its asperities, and mitigate its horrors; but I deny that such customs constitute law binding upon any belligerent, or enforceable by any tribunal. In pursuing the course which I have thus laid down for myself, my views will be based principally, if not entirely, upon the authorities already placed before your Honor.

When I left off yesterday, I conceive that I had fully discussed the whole of the facts exhibited by the evidence; and I submit that those facts may be summed up as establishing that the prisoner Young, then being an officer, of the Confederate States, actually commissioned for the purpose of harassing the Federal States on their northern frontier, organized a party of twenty Confederate soldiers within the enemy's lines (namely in Chicago), in

conformity with instructions given to him by his Government; and that with this party of men, under the sanction of the official of the Confederate Government to whom he was referred for instructions, he made an attack on the town of St. Albans; that he pillaged it, and set fire to it as far he was able; and that on being driven out of it, he took refuge in Canada. These, I think, are facts clearly established by the evidence. My learned friends opposite go further, and say it is proved that the raid was made from Canada. I contend it is plain that the particular incursion actually carried out, originated and was planned and organized in Chicago, in the United States; and that there is no proof tending in any way to show that the attack originated here, or that it proceeded from here. And I say that the only evidence offered on this latter head, is that which establishes that Young himself came to Canada, after he had organized his little party in Chicago and settled upon the point of attack there; and reported his doings to Mr. Clay; getting his sanction of them after he had so planned and arranged the enterprize within the territory of the belligerent; and also that three of the persons who acompanied him on the raid were traced in a part of Canada, shortly before the attack on St. Albans. This is all that is proved by the evidence adduced, and it does not prove the pretension of the prosecution on this point. I have laid the whole of it fully and fairly before your Honor, exaggerating or extenuating nothing; and as my learned friends have followed me closely, and have failed to point out any particular in which I have omitted any proof favorable to their view, or distorted any of the statements of the witnesses; I think I may assume that my argument has been free from any objections to its fairness and impartiality.

Now, I wish to call your Honor's attention to the arguments by which my learned friends opposite endeavor to destroy the case we have thus made out. I take Mr. Carter's objection first; because it is an objection to the effect of any commission which could be issued by the Confederate States, and therefore, takes a wider range than mere objections to that, with which I contend Young was fortified. He says, in his proposition submitted to your Honor, that "The Queen's Proclamation of May, 1861, is the exercise of a "national right, 'the effect of which at most, is to regard both "*parties as entitled to belligerent rights* or privileges of commerce'; "but these rights must not be confounded *with the rights and "privileges resulting from recognition.* England, he says, 'has "not *recognized* the Confederate States, as an independent "sovereignty;' and he argues therefore that all courts and judges "are bound to consider the 'ancient state of things as remaining "unaltered.'"

Now, in his fourth and fifth propositions, he presses this proposi-

tion to what he conceives to be its full and logical extent. He says: applying these rules of law to the commission we produce, that our proposition that the Court is bound to take notice of it, and of the evidence relating to it, is untenable, and opposed to the jurisprudence of the English and American Courts; because, he says, that the adoption of it would be a virtual assumption by the Judge of the power to recognize the existence of the Confederate States as an independent nationality. Now, Mr. Carter has made a very obvious mistake, in submitting these propositions as applicable to this case. He has omitted to perceive that there is a difference between the recognition of a State as an independent sovereignty, and the recognition of a State as a belligerent. If the reception of Lieut. Young's commission as evidence, involved the necessity of the absolute recognition of the Confederate States as an independent sovereignty, my learned friend's proposition would be correct. He is correct in stating that England has not recognized the independence of the Confederate States; and not having done so, that your Honor cannot so recognize them. I admit that; but is such a recognition in any respect necessary to enable you to look at this commission as an admissible instrument of evidence? Is your inability to notice this commission, or to recognize it as having any force, a necessary consequence from the fact that England has not recognized the seceded States as a sovereignty; admitting, as he does, that she has recognized them as a belligerent? Let us see what the authorities say about that. I shall cite his own, as affording the most conclusive exposure of the fallacy he contends for. But first I shall quote himself, to refute himself. He virtually admits, in his first proposition, tnat the effect of declaring the neutrality of a nation is, to cause both parties to be regarded as entitled to belligerent rights; now, I would like to know from my learned friend, what he considers to be belligerent rights. I take it, that he must be of opinion that making war is one; and as war cannot be made without officers and soldiers, the right of commissioning officers and levying soldiers, must be incident to the right of making war. Now, I submit that if we concede to the Southern States the right of commissioning officers, we must recognise their commissions when they appear before our Courts. To declare that we admit their right to appoint an officer, and then to declare all evidence of that appointment inadmissible, would simply be an illogical and ridiculous mockery, of which no nation could be guilty.—What kind of recognition of belligerent rights would it be, to say to the Confederate States: you may make war upon the United States, but you must not have any army or navy, because you cannot appoint officers, commissioned or otherwise, or levy soldiers? Such a position never could be assumed by any State; and there

really is not a shadow of ground for pretending that Great Britain now occupies it. But in addition to the authority of my learned friend himself, on this subject, I will avail myself of the books he cited, as a means of finally disposing of his proposition. He cited Halleck, pp. 75, 76, who says: "The recognition of the independence and sovereignty of a revolted province by other foreign states, when that independence is established in fact, is therefore a question of policy and prudence only, which each state must determine for itself; but this determination must be made by the sovereign legislative or exeective power of the state, and not by any subordinate authority or the private judgment of individual subjects. And until the independence of the new state is recognized by the government of the country of which it was before a part, *or by the foreign state where its sovereignty is drawn in question, courts of justice and private individuals are bound to consider the ancient state of things as remaining unaltered.*

This is excellent and undisputed law. But look at pages 73 and 74, of the same book, "where General Halleck distinctly admits that the rights of belligerents, which neutrals may concede to the parties to a civil war, include all rights necessarily incidental to a state of war. This is to be found on the page next but one to the page cited by my learned friend. So that the very book, which Mr. Carter has first cited, establishes the proposition that the state of belligerency implies the possession of all rights necessarily incidental to war: and if it does, it compels those who recognize the belligerency, also to recognize the only mode in which that character can be preserved, and its functions performed, namely the creation of armies. And as armies are composed of officers and soldiers, and the belligerent must have the right of appointing officers; that recognition renders it necessary for our Courts to recognize such appointments when made.

My learned friend also cited "Wheaton," page 47, whose language is almost identical with that of Halleck; the latter being in fact copied almost *verbatim* from Mr. Wheaton's book. Well, nobody disputes the doctrine there laid down. But is that doctrine applicable to this case? Mr. Wheaton's book will itself answer my question. He says at page 40: "If the foreign state professes neutrality, it is bound to allow impartially, to both belligerent parties, "*the free* "*exercise of those rights which war gives to public enemies against* "*each other;* such as the right of blockade, and of capturing "contraband and enemy's property." Mr. Lawrence's note upon this passage, illustrates it by examples drawn from the history of the struggles between England and the present United States; Spain and her colonies; Turkey and Greece; and finally from the existing state of things in America. (Mr. Abbott here read from

Wheaton, p. 43, *in notis*, the description given of the position of England and France with regard to America.)

Mr. Carter.—Will you read the previous paragraph?

Mr. Abbott.—Certainly (reads it, laying down the rule that in this question "of belligerent rights, as of a more formal acknowledgment of independence, the decision is with the Government "and not with the Courts;" and referring to a decision at Galveston in Texas respecting a capture on behalf of an unrecognized Mexican republic or state,) I admit that the recognition either of belligerent rights, or of independent sovereignty must be the act of the Government, not of the courts; but, in this case, the British Government has admitted the belligerent rights of the seceded States. My argument is that the recognition of those States as belligerents gave them a right to all the privileges of belligerency, and, consequently, the right to appoint their own officers. In the case referred to, the Government had not recognised the belligerency of the State in question, and did not, consequently, recognise its right to capture; but if the Government had recognised the belligerency of that State, it certainly would not have denied the validity of a capture made on its behalf.

It is a fact also which illustrates the effect of a recognition of belligerency, that England has had communication with persons informally representing the Government of the Confederate States.

Mr. Carter.—I do not dispute, that recognition is an act of Government. My proposition is that your Honor is restricted by the judicial character you fill, from taking upon yourself to concede that recognition which Government alone can grant. I refer to an authority I did not cite before; pp. 119 and 120 "Halleck."

Smith, J.—You both agree on the principle. It is the Government alone that can recognize the claim of any nation to independent sovereignty. But the question Mr. Abbott puts is this:—Since the sovereign of England has recognized the belligrent character of the Southern States; then although the recognition falls short of a recognition of complete independence, yet are not the Courts bound to recognize them to the same extent as the sovereign has recognized them?

Mr. Carter again read from Wheaton, page 42, and observed: As a national matter there is a vast difference between recognizing the belligerent character of those States and their separate national character; and as long as the latter is not recognized by the sovereign, the Court can not recognise it.

Judge Smith.—It is perfectly clear that the Sovereign of this country not having recognized them as an independent nation, I cannot do so.

Mr. Carter.—Then you cannot recognize the commission given to the prisoner Young by such a Government.

Mr. Abbott.—That is a *non sequitur*. I agree with Mr. Carter's proposition that the power of recognition rests solely with the sovereign power of the State, and that the independence of the Southern States not having been recognized, your Honor cannot treat them as independent. But I utterly deny the correctness of his conclusion. The Queen's proclamation of May, 1861, is express in its recognition of the belligerency of the Confederate States, and in its injunctions for the observance of a strict neutrality in the strife between them and the Federals—and that, I contend, is sufficient to render the military commissions of the Confederates receivable in evidence here. My learned friend Mr. Carter cites 2 Phillimore, p. 25, to the effect that: "It is *a firmly established doctrine of British, and North American, and indeed of all jurisprudence*, that it belongs *exclusively to Governments to recognize new States*; and that until such recognition, either by the government of the country in whose tribunals a suit is brought, or by the government to which the new State belonged, *courts of justice are bound to consider the ancient state of things as remaining unaltered.*" No one denies this. But Phillimore makes exactly the same distinction that Wheaton does; for at page 17, he points out the effect of the observance of neutrality in a struggle between an old and a new State, and states that it has some beneficial effect with respect to the nation which is fighting for independence. For, he says, it allows *impartially* to both, *equal rank and character* as belligerents.

Mr. Carter.—I say that England has gone the length of acknowledging that a civil war exists; that she has declared her neutrality, and, as a consequence, recognized the belligerent capacity and belligerent rights of the combatants. Therefore, I admit the correctness of the proposition he enunciates, but it is the application of it I deny; and I say, there is a vast distinction between acknowledging belligerent rights, and the rights and privileges resulting from the recognition of the sovereignty and independence of a state. For this is not a war waged between two separate nations possessing distinct rights and sovereignty, but a civil war in a country with which we are on terms of peace, and towards which we have treaty stipulations.

Mr. Abbott.—If I admit every syllable my learned friend has just uttered to be true, which I might do, how does it affect the question? What he says, does not in any way even purport to controvert my pretension, that the recognition of belligerent rights—which he admits has occurred—involves as a necessary consequence the recognition of a commission issued by one of the belligerents, as a legal instrument of evidence. To render the distinction he

has just drawn of any value, he must shew that nothing less than the universal recognition of a State as an independent sovereignty will justify the issue of a commission. In support of my views on this point I will refer to two or three authors, but will not permit myself to dwell upon it at any length. Vattel, at page 424, speaking of the position of parties in a civil war, says:

"A civil war breaks the bands of society and government, or, at "least, suspends their force and effect: it produces in the nation "two independent parties, who consider each other as enemies, and "acknowledge no common Judge. Those two parties, therefore, "must necessarily be considered as thenceforward constituting, at "least for a time, two separate bodies, two distinct societies. Though "one of the parties may have been to blame in breaking the unity of "the State and resisting the lawful authority, they are not the less "divided in fact. Besides who shall judge them? who shall pro-"nounce on which side the right or the wrong is? On earth they "have no common superior. They stand, therefore, *in precisely the "same predicament as two nations, who engage in a contest, and, "being unable to come to an agreement, have recourse to arms.*"

I have here also the work of an author, who has by no means acquired the position as a legal writer, which he will undoubtedly, at some future day attain; but whose writings on certain branches of international law have attained a wide spread reputation. I refer to Mr. George Vernon Harcourt, who writes, under the name of "Historicus." He appears rather to lean towards the Federal side in his sympathies; and his views of law, have been in some respects vigorously combated, on the ground that they unduly incline in the direction of his feelings. I am sure my learned friends will accept his opinions as deserving of the highest consideration, if not as being absolutely conclusive: and I find that he attaches a very different kind of importance to the recognition of belligerent rights, from that which my learned friends would give it At page 13, he says:

"It is not true, however, in the meanwhile, that foreign powers "are entirely without the means of redress against the persons owning "the allegiance of the new and inchoate government. The recognition "of the insurgents as belligerents gives them quite a sufficient person-"ality to enable foreign powers to address to them remonstrance, and "to receive at their hands satisfaction. A semi-official correspond-"ence actually took place at the beginning of the strife in America "between the English Foreign Office and President Davis, on the "subject of the rules to be observed towards neutral nations, in the "maritime war that was about to be waged. A government which "is sufficiently incorporated to enjoy the rights of a belligerent can-"not be suffered to evade the correlative duties which are incum-"bent upon it."

But though my friend, Mr. Carter, submitted this objection to Lieut. Young's commission as something new, it really is not new to the Courts. It is true that it is a new thing to hear his proposition of law used, in an attempt to exclude the commission of a belligerent from the consideration of the Courts. But the effect of such a commission, and its admissibility in evidence have been repeatedly pronounced upon. It is spoken of, for instance, in the Chesapeake case, to which reference has already been repeatedly made. If there had been a commission produced in that case, the prisoners would, no doubt, have been discharged; for Judge Ritchie repeatedly and plainly speaks of such a species of authority as ample evidence of belligerency. And if sufficient evidence, can it be said that it would not be legal evidence? In the Roanoke case there was a commission produced by the prisoner, whereupon the Attorney General immediately declared the case could go no further, and the prisoners were discharged by the Judge. And Earl Russell, in his letter to Mr. Adams on that subject, gave the fact of the production of a Confederate commission as the sole reason—and a sufficient reason—for sustaining the discharge. It is true that Earl Russell's opinion is not a judicial one; but it is of great weight on this point, for my learned friend's objection rests chiefly upon a reason which is as much one of foreign policy as of law; and Earl Russell is the statesman who at the date of that letter was at the head of the department of Foreign Affairs; and he wrote it as the opinion of his Government in that behalf. In the case of the Nashville, in 1861, Earl Russell wrote in peremptory terms to Mr. Adams, denying that the act of the officers and crew of the Nashville could be treated as pirates for burning an American vessel at sea; and quoting in his denial Mr. Adam's assertion that their act "approximated within the definition of piracy." And the expressed reason of that decision was that "the Nashville was a Confederate vessel of war;" and "that her commander and officers had commissions in the Confederate service." Even in the Philo Parsons case, it was not denied that the Court had a right to recognize the commission of the accused; but there, the prosecution picked out the offence of taking $20 from the steward of the boat that was assailed, and charging the prisoners with that offence, argued, that as they had gone on board a vessel and robbed a steward of $20, they were not entitled to the rights of belligerents. And the Court sanctioned this isolation of an incident in the capture of the Philo Parsons, from the leading fact of the capture itself; pronouncing that incident a robbery, in the face of the undoubted belligerent character of the act taken as a whole. It is fortunate for the officers and crew of the Nashville that they did not fall within the jurisdiction of the Upper Canada Judges; for probably there never was a capture, in

which private property was not taken by the captors. But it was not pretended in the Philo Parsons case that the commission could not be received in evidence for the defence.

It appears therefore, that in these cases, which are all I recollect, as having arisen since the war broke out, the commission of the Confederate States as authority for belligerent acts, was expressedly or impliedly recognized as provable. And I will now close this part of the argument with a citation from Wheaton's Reports, taken from the very same case cited by my learned friend. (3rd Wheaton, p. 610, U. S. against Palmer.) This is what Chief Justice Marshall says in that case:

"It may be said generally that if the government remains neu-
"tral and recognises the existence of a civil war, its courts cannot
"consider as criminal those acts of hostility which war authorizes,
"and which the new government may direct against its enemy.

"It follows as a consequence from this view of the subject, that
"persons or vessels employed in the service of a self-declared
"government thus acknowledged to be maintaining its separate
"existence by war, must be permitted to prove the fact of their
"being actually employed in such service by the same testimony
"which would be sufficient to prove that such vessel or person was
"employed in the service of an acknowledged state."

The State here spoken of was not an acknowledged State. It was not even a State acknowledged by the United States as belligerent as far as I recollect; but it was actually maintaining its position as a separate State, though without any recognition by the United States, either of its belligerent *status* or of its sovereignty. Yet Chief Justice Marshall declares that a prisoner, holding a commission from such a State, must be permitted to prove his commission, in the same manner as if employed in the service of an acknowledged State. I venture to submit, therefore, that the novelty of Mr. Carter's application of the rules of law he has cited, is more remarkable than its soundness: and that your Honor is bound to receive Lieut. Young's commission as admissible evidence in this matter.

The next point to which I intend to address myself, is one that my learned friends opposite have laid much stress upon, though I think they have stated it in a peculiar manner. They assert that the act complained of is not an act of war at all; for, they say it is neither an act of war *per se*, nor a constructive act of war. I would like to know what they mean by an act of war *per se*. Is the arraying of thousands of men against each other in bloody conflict an act of war *per se?* My learned friends will probably say it is. Then I say the Gordon riots in London, and the Macready riots in New York were acts of war *per se*. And perhaps they

will also assert that the shooting of a solitary man in the dark by another solitary man, is not an act of war *per se*. In that case, unless it can be shown by a resort to argument, that it is a "constructive" act of war, the sentinel who shoots an individual approaching his post must be regarded as a murderer. Where in the books do they find this distinction between an act of war *per se* and a constructive act of war? What jurist treats of it? I think among the piles of volumes that have been displayed before your Honor, my learned friends might have found some stray sentence that would have sustained them. But we have heard nothing of the kind. In fact, I am under the impression that my learned friends are the first and only jurisconsults who have ever drawn that distinction. Mr. Johnston attempts to dispose of the question by arguing as he always does, in choice and plausible language, which gives a force to his argument that it does not intrinsically possess—that no man can mean to say that the easing of poor old Mr. Breck of two or three hundred dollars is an act of war *per se*. "What," he asks, "is "the natural consequence of robbing Mr. Breck? Is it that the "national power of the United States is prostrated, or in the "remotest manner affected by it? The natural consequence is "that Mr. Breck loses his money; but it requires a great deal of "imagination to conceive, and a good deal of ingenuity to explain, "how that fact tended to exhaust the national resources, or attack "in any manner the national existence." He goes on in the same strain through half a column of the paper in which his speech appears, and by holding up the particular act of pillaging Breck as being a petty and inconsiderable act, incapable of affecting the result of the war, he endeavors to show that it could not be what he calls war *per se*. And my learned friend, in support of this kind of argument, makes this characteristic statement. He says: "As "far as external appearances are concerned, to conclude only from "what was described to us by the eye witnesses of this proceeding; that it was a warlike operation may, I think, be fairly said "to be impossible. If common sense were not quite a sufficient "guide, by itself, to conduct us to this conclusion, the authorities "already cited by my learned friend Mr. Bethune are upon this "point conclusive. Vattel, Martin, Manning, Polson, Woolsey, "Kent, Wheaton, and Halleck, concurring, as they have been "shown to do, upon such a point as this, may safely be deemed of "sufficient authority to guide us to the decision of what is, and "what is not considered upon general principles to be an act of "war." Well, now, as it happens, no one of those authors has said, that the pillage and sack of a town is not an act of war. No one of them has drawn the distinction between an act of war *per se* and a constructive act of war. Not one of the citations quoted

by Mr. Bethune, on whose labor and learning Mr. Johnston professes to rely, directly or indirectly lays down any distinction between an act of war *per se* and a constructive act of war; nor do any of them treat at all upon "such a point," as my learned friend is urging, when he pours out their names so fluently. War does not consist merely nor even mainly of battles between great armies, although the modern tendency is to confine it to them as much as possible. On the contrary, it is composed of innumerable minor acts of hostility, in which, unhappily, injuries to individuals and to *private property* are of momentary occurrence. My learned friend's remarks, as applied to Breck, might, therefore, with equal propriety and equal justice, be used with respect to incidents in this and in every other war, which occur hourly—which are occuring while I speak. When a cottage in the Shenandoah valley was burned, was "the national power" of the Confederates "prostrated" by so doing? When one of the pillagers of Darien carried off a table on his head and a pair of chickens in his hand, did those acts "exhaust the national resources, or attack in any manner the national existence?" Such puerilities as these appear smart, but they are not argument, and do not even resemble argument. They are the more excusable in my learned friend, however, as they constitute quite as large an element in the Burley judgment as they do in his address; with this difference that he has greatly the advantage in the mode in which he has placed them before your Honor.

What the authors, whose names Mr. Johnson runs over so glibly, do contain, however, is a clear and conclusive statement of what the rights of nations at war with each other really are. And they certainly do lay down, as an exception to the general rule already sufficiently established by our authorities, that all subjects of each belligerent are made enemies by war, and may kill each other and despoil each other of their property; that the war shall not be waged with any more violence or cruelty than is necessary to the end which the nations at war intend to gain. That is the rule which nations in modern warfare generally voluntarily observe. But this exceptional rule is not only itself subject to a great many exceptions, but it is one not enforcible in any way, except by reprisals or retaliation.

Moreover, the tenor of every citation made from the other side, as to the mode in which war ought to be conducted, is, that both parties are entitled to carry on war, in such manner as they may think proper, without responsibility to any one; and especially it is declared in most of them, that no neutral or other power can judge or decide whether one mode or another is proper or improper; or can punish in any manner or way, any breach of what they may

consider to be the rules according to which war ought to be conducted. In every author, I say, there is to be found the assertion that there is no absolute nor enforcible rule in such matters; but that the will of the nation carrying on the war, alone can decide in the last resort.

Judge Smith.—It is a matter of conscience.

Mr. Abbott.—A mere matter of conscience. The difference in this respect between what are called the laws of war and municipal law, is similar to the distinction made by Pothier, between the *for interieure* and the *for exterieure.*

Judge Smith.—In order to bring that point to a practical test,—if it be asserted that the laws of war, or the laws of nations have been violated, what tribunal can decide whether they have been or not?

Mr. Abbott.—That is the point.

Mr. Carter.—I do not contend that when once an act is established to be an act of war, the Court can take into consideration its nature, or character, or deal with the authors of it. But that on the contrary, when it is admitted to be an act of war, it is beyond the control of any municipal court. I contend, however, that the circumstances surrounding this case show it was no act of war at all.

Judge Smith.—We are to determine, in the first instance, whether the act complained of is an act of war or not. If it be, what tribunal can try its propriety?

Mr. Carter.—I say that this offence is not only a breach of civil and municipal law, but a breach of international law. It involves both. In the first place you can not regard it as an act of war, as the prisoners previously lived here, on neutral territory.

Judge Smith.—You must not confound propositions. If the act is done with authority—in obedience to orders given on behalf of a State recognized by our Government, so far as carrying on the war is concerned, and yet is alleged to be in violation of the rules of war; who is to try that question? To say that it is to be tried in any neutral country is absurd.

Mr. Carter.—What I contend for is, that there is no authority proved.

Judge Smith.—That is again another point. That is the point I want to bring you to.

Mr. Carter.—I say that if the Confederate States were an independent nation, they could not give authority to those parties to act as they did at St. Albans.

Judge Smith.—The real difficulty of the case is this, has there been shown to have been any competent authority under which these men acted?

Mr. Devlin.—Was there a commission? or has the act been avowed?

Judge Smith.—If, as these men allege, they acted in obedience to orders issued by competent authority, and only did what, in the execution of their duty as soldiers, they were bound by their allegiance to do, then the simple question is, have they proved such orders? If they have not, then all other considerations fall to the ground, and they stand here as ordinary criminals.

Mr. Bethune commenced to explain what he meant by an act of war *per se.*

Judge Smith.—Neutrals cannot investigate the character of an act of war. When nations are at war they act as they please towards each other; and a neutral has no power to say this is an act of war, or is no act of war. The assumption of the contrary doctrine would lead us into a labyrinth of difficulties.

Mr. Abbott.—This discussion has brought the question raised respecting acts of war, to an intelligible point; and the view of it just stated by your Honor is the one I have been all along contending for. With regard to the impression conveyed to me by what your Honor has just said, as to proof of express authority being requisite to enable you to regard the prisoners' acts as hostile acts, I beg respectfully to submit that I think the authorities would sustain a wider view of the functions of a commissioned officer. It is not of much importance to my case which should be adopted; for I consider the express authority fully proved. But I do not wish your Honor to think that I admit that an officer, with soldiers under his command, may not sack and burn an enemy's town at any point and at any time while war continnes. I contend that if he had never had any instructions from Mr. Clay, the production of Mr. Young's commission as an officer, and the proof that he had a party of twenty soldiers acting under his orders; the act charged being that of attacking, and, as far as they were able, sacking and burning a town in Vermont; would have been sufficient to defeat this demand. I say that the fact of himself being an officer, and his command being soldiers of one of the belligerents, acting on their behalf, against the other belligerent, and in their territory, is sufficient, without any instructions whatever from his Government, entirely to deprive the municipal law of Vermont of all power over him, and entirely to divest the act he did of the character my learned friends on the other side wish to attach to it. It could never be contended under such circumstances that the acts they committed were mere violations of the municipal law of the State of Vermont. But I do not intend to argue this point further, as I am quite satisfied our position, as regards it, is fully established.

To return, then, to the authorities of my learned friends, and the principles they attempt to draw from them, I wish once for all to

say, that I contend that the statement by the learned authors cited, that certain hostile acts are unlawful, conveys nothing more than that they are not in accordance with the course of action which civilized nations usually follow in war. As I have repeatedly remarked, none of those authorities class acts, such as the present, among what are termed unlawful acts; but if they did, the fact of their being unlawful, in the sense in which they use the word, would not bring them within the jurisdiction of the ordinary municipal tribunals. And another line of argument and authority they have followed, is quite as easily answered. Citing from numerous books in support of their view, they insist that it is unlawful for persons, though belonging to a belligerent nation, to commit depredations within their enemy's lines in disguise; and that such marauders are liable to be treated with extreme severity. All this is true enough. Even belligerents, if they are acting within the enemy's lines in disguise, are liable to be shot or hanged; that is, they are amenable to the laws of war, and are liable to be tried by court martial as guerillas, spies, and the like, and executed just as Beall was. Or, if the offended belligerent chooses, he may shoot or hang them without trial. But none of those authorities show that a guerilla or spy is to be tried as an offender against the ordinary municipal law, or that he is amenable to it in any way. Beall's case is an instance of the construction put upon these authorities by the United States themselves. He was charged with several acts, which, under ordinary circumstances, would have sustained indictments before the regular courts, but there was no pretence of his being *justiciable* by those courts. He was tried by a military court for these very acts, as violations of the laws of war, and he was found guilty accordingly. And when my learned friends cite the Burley case, they should remember that the chief offence charged against Captain Beall, as a violation of the laws of war, for which he was tried by a tribunal organized under the laws of war, was the very act which Upper Canada Judges held to have had nothing to do with war. Either Beall was illegally condemned and executed, therefore, or Burley was illegally extradited. I shall content myself at present with saying on this point that I am prepared to admit that the presence of Young in the enemy's country, with a party of soldiers in civilians' dress, would have rendered him and his party liable by the laws of war, if captured, to be treated as spies or guerillas, and hanged or shot on the spot; and I submit that a verification of the authorities cited on this point will show that they carry my learned friends no farther. But that they in no instance establish that persons so liable to punishment, are amenable to the Courts, and consequently could be extradited, under the Ashburton treaty. I should except, however, the letter of Dr.

Lieber to Judge Advocate Bolles, written on the 5th of February last for the Beall case and for this one, and actually read to the Court by the Judge Advocate, as authority in the Beall case (p. 85); and now read by my learned friends as an authority here. It is a new feature in the argument of a case to hear a letter from the Plaintiff's Counsel, giving his opinion on a case before a Court, read to that Court as an authoritative exposition of the law of that case. And it is more extraordinary still to hear a letter from an obscure person in the United States, upon a question of public and international law arising between that Government and the Government of Great Britain, quoted as solving that question; notwithstanding that the writer, in endeavoring to establish his position, characterizes the doctrine approved of in an official declaration of Earl Russell as the organ of the British Government, as shewing such "insolence, absurdity, and reckless disregard of honor" as to "fairly stagger" a jurist or a student of history." My learned friend, Mr. Johnson, found a Pickwickian interpretation for the term "insolence," but he wisely abstained from seeking to translate "absurdity and reckless disregard of honor." His position, while he argued that "insolent" meant "unusual," was sufficiently pitiable, without being prolonged during the performance of a similar operation upon Mr. Lieber's other polite expressions. I shall take the liberty, therefore, of paying no further attention to this, the solitary favorable authority which my learned friends have been able to find, or their clients to manufacture, for the purposes of this case.

What your Honor has said on the proposition of my learned friends as to acts of war, relieves me to some extent from the task I had imposed upon myself, of following *seriatim* the authorities cited on that subject by the other side. But I will glance at two or three of them. Mr. Devlin cited, chiefly, from Vattel; and Mr. Bethune, also, made a very extensive use of his work. I think therefore that I shall merely refer your Honor to the citations furnished in support of our 7th, 8th, 9th, and 10th propositions; and then content myself with taking the quotations made by my learned friends from Vattel, and showing how far my idea, with regard to them, is borne out. My learned friend commenced by a citation from Vattel at page 351, and Mr. Bethune by another from page 347. These are the very first quotations they made, and it is remarkable how they completely deprive my learned friends' arguments of all force in law, leaving to it, however, its full value as an exposition of what war *ought* to be. At page 347, after laying down the rule that in a lawful war where the end is lawful, the belligerent has a right to employ all the means which are necessary for its attainment, Mr. Vattel continues:

" The lawfulness of the end does not give us a real right to any-
" thing further than barely the means necessary for attainment of
" this end. Whatever we do beyond that, is reprobated by the
" law of nature, is faulty and condemnable *at the tribunal of con-*
" *science.*"

And in the very next paragraph, assuming as an axiom that " it belongs to each nation to judge of what her own particular " situation authorises her to do," he proceeds to show that a sovereign who unnecessarily adopts extreme measures and carries on the war with unnecessary severity, " is not innocent before God and his own conscience." These few lines embody the principle, the development of which is the subject of the 8th chapter of Mr. Vattel's third book. It is the " tribunal of conscience " to which a Government is amenable, when it carries on a war in a manner inconsistent with the humane rules which are usually observed in modern times. It is before " God and his own conscience " that he will be held culpable, not before any human Court or Judge. But there are numerous circumstances mentioned by Mr. Vattel in the very pages my learned friends have cited, where all the humane rules they approve of so highly, may be violated, without incurring even the reprobation of the conscience,—such are those things which are done by way of retaliation and reprisal.—And these were the professed objects of the St. Albans raid, and constitute the most obvious of those which can be supposed to have actuated the Confederate Government in devising it. Then, if Mr. Vattel's doctrine cited by my learned friends be correct, it is only the Confederate Government to whom " it belongs to judge what her own particular " situation requires her to do;" and if she judges wrong and perpetrates acts which are not justified by the circumstances, it is only " to God and to their own consciences " that her rulers are responsible.

The remainder of the same chapter has been cited at different points, where various kinds of injuries to an enemy are declared to be unlawful. I have already shown the effect of this kind of unlawfulness, but it may be useful to pursue the argument a little further. Mr. Devlin reads to us from page 351, that women, children, and feeble old men do not come under the denomination of enemies. And that soldiers should not harm those classes, nor peasants and others, who do not carry arms. But he says in section 148:

" But all those enemies thus subdued or disarmed, whom the
" principles of humanity oblige him to spare,—all those persons be-
" longing to the opposite party (even the women and children), he
" may lawfully seize and make prisoners, * * * * at present, indeed
" * * *, women and children are suffered to enjoy perfect security,

" and allowed permission to withdraw wherever they please. But " *this moderation, this politeness, though undoubtedly commendable,* " *is not in itself absolutely obligatory;* and if a general thinks fit to " supersede it, he cannot be justly accused of violating the laws of " war. He is at liberty to adopt such measures, in this respect, as " he thinks most conducive to the success of his affairs."

So that, if the enumeration of non belligerents, as persons whom it is unlawful in war to injure, had any bearing on this case, which it has not; the context, in the very page from which the rule is drawn, but which my learned friend omitted to read, points out that this unlawfulness is not absolute; it is subject to no Judge here on earth, and is punishable by no tribunal.

But let us look a little closer at this argument of my learned friends, and apply it to this case. Admiting for a moment that the St. Albans attack falls within the description of unlawful acts of war, would that fact bring the prisoners within the treaty? The killing of prisoners who have surrendered we are told is unlawful. But what is the consequence of putting a prisoner to death after his surrender? Is the person who kills him guilty of murder? Can he be demanded and extradited, if he is found in a friendly country with whom his enemy has such treaty as ours? Take the case of Gen. Morgan, the gallant Confederate cavalry leader, who was shot dead in a garden by a party of Federal soldiers while unarmed, and after he had surrendered himself; was stripped of his clothing and his corpse flung into the nearest ditch. According to Vattel, and to the hundreds of other writers to whom my learned friends have referred on this very point, these were unlawful acts justifiable on no grounds whatever; and Heaven forbid that I should dispute such a proposition. But would the murderous ruffian who killed him be liable to be tried by any municipal tribunal for that crime? Would the sordid outcasts who tore the garments from the yet palpitating corpse, be held guilty before the Courts, of an ordinary theft? To hold that they would be, would be in one sense as shocking to the opinions of the civilized world, as to approve of the infamous ontrages which I quote in illustration of my argument.

Mr. Devlin again cites pages 357 and 359 of Vattel; but for what purpose? To prove that an enemy may not lawfully be treacherously assassinated or poisoned! We don't require books to be read to us to prove such propositions. They cannot be disputed; but they are quite as irrelevant as they are true. History almost within our own time gives us instances of the rule; for we know that the assassination of Napoleon Bonaparte was proposed to England; and we know how the proposal was received. Surely we might have been spared these

quotations, as well as that which follows them at page 362. A moral exhortation is very good in its place; but it is not by the views of philanthropists as to what the world ought to be, that we are to be governed in administering the law. Mr. Devlin read us half of page 362, but if he had also read the first two lines of it, I think he would have found it unnecessary to proceed. Mr. Vattel prefaces the portion Mr. Devlin read, by saying, "I cannot conclude this subject of what we have a *right to do* against the person of the enemy, without speaking a few words concerning the dispositions we *ought to preserve* towards him." This really covers the whole ground. Our authorities will show your Honor what belligerents have *a right* to do. My learned friends attempt to limit that right to what Mr. Vattel thinks they *ought* to do. I imagine there can be little doubt which rule your Honor must follow.

In the next chapter of Mr. Vattel's great work, which treats of the rights of war with regard to things belonging to the enemy, from which Mr. Bethune has largely cited, the same distinction is to be found pervading the whole discussion. The *right* to seize upon and appropriate to ourselves the property of our enemy is stated in direct terms (pp. 364, 366.) But the *duty* of exercising this right with moderation and humanity is strongly urged upon belligerents; and upon these statements of duty my learned friends build up the fallacious proposision, that because they think the pillage of St. Albans does not square with Mr. Vattel's view of propriety, therefore it is unlawful; and, therefore, also, the prisoners are taken out of the immunity which the laws of war afford them: and must be extradited. But in reality the pillage of an enemy is nowhere declared to be unlawful; but, on the contrary, is referred to in every page of chapter 9 as an undoubted right. And Mr. Vattel mentions, also, in what way pillage may be fully justified—namely, as retaliation and reprisals; and he states it to be entirely in the discretion of the authorities of each belligerent to decide as to the nature and extent of such retaliatory measures. I proposed to place before your Honor evidence, proving that the mode in which this war has been carried on by the Federals was such as to afford the fullest justification of the retaliatory raid now under consideration, but your Honor rules it out, and I tnink rightly. For I hold that if the act be done with the authority, express or implied, of the Confederate States, its propriety is a question beyond your jurisdiction. But ample evidence of it is nevertheless not wanting in those records of daily events which constitute the history of this war. The extract I read yesterday from the "Rebellion Record," shows how the United States wage war. But there has been something more then this. The Federal Legislature has passed an act,

by which the entire property of the subjects of the Confederate States has been confiscated. I shall read from the speech of Mr. Crittenden a few sentencss, which admirably characterise this most extraordinary piece of legislation:

"You propose the confiscation of all the property of rebels, their "aiders and abettors. What is the number of people who would be "included in the proscription? whom would that include? All who "have paid taxes, all who have made contributions to support the "rebellion? all who have taken up arms, or all who have given "aid and comfort to those who have taken up arms in support of "the rebellion? How many would that leave? The exceptions will "be but very few, if you consider who are the principals, and who "the aiders and abettors of this rebellion. Here are ten States, "and by your law of confiscation you proscribe man, woman, and "child. The whole history of mankind does not furnish anything "like it. Such a proscription was never before issued by any "human authority. No plague, no pestilence, which ever de-"scended upon mankind has ever wrought such mischief as this "would."

So that so far, therefore, from denying the right of one belligerent to seize the property of another, the United States, as Mr. Crittenden shows, have actually confiscated the whole of the private property of every man, woman, and child in the Confederate States. Their will was worthily executed by Montgomery in his incursion into Darien; and the devastation, the pillage, the destruction which have made a desert of the Shenandoah valley, would not be overbalanced by thousands of such raids as that upon St. Albans. If, therefore, it were necessary to show that the attack on St. Albans was a fair measure of retaliation on the part of the Confederate Government, we could do so without difficulty. But I again respectfully submit that this question is not before your Honor. If the Confederate States had a right to give orders for such an expedition at all, it is not for us, nor for your Honor, to say whether or no this was a proper occasion on which to exercise that right.

If I were disposed to pursue the discussion of this point, I think I could follow my learned friends through the books they have cited, and show that in every instance the distinction I have been contending for is enunciated by the authors they cite. However strongly those writers may advocate the carrying on of war in a humane manner, or may contend that it ought to be waged in this way or in that, they all agree that it is for the belligerent nations themselves to decide in what way they will actually carry on hostilities; and if either party does that which the laws of war do not recognise as lawful, the only remedy is reprisal and retaliation. Unless, indeed, the persons actually engaged in what is deemed an

unlawful expedition are actually captured by their enemy, in which case, they will be liable to be treated in any manner that enemy may think proper, and the injury they may have done can be avenged by retaliatory acts, in the discretion of the injured party. It is only in these modes that the laws of war can be enforced, or their violation punished. Thus, if the prisoners had been captured in the United States it would have been for that Government to say how they should be dealt with. They probably might have been treated as guerillas, perhaps as spies; tried by drum-head Court-martial, or shot or hanged on the spot, without any form of trial.

Before leaving this subject, I wish to refer to the point suggested by Mr. Johnston, as to the distinction between lawful and unlawful war. Mr. Johnston, in his argument, insists that this act was not lawful war; he cites from Judge Talmadge and Judge Cowen to sustain his pretension; and he refers to Vattel on the same point. I find it difficult to seize his exact meaning in this—and think he has misapprehended the jurists he quotes. Their discussion was upon what constituted a lawful state of war; not as to what was a lawful *act* of hostility between belligerents. And he applies the instances Judge Talmadge gives of incursions which do not constitute a lawful *state* of war, to the present case, to prove that it was not a lawful act of hostility. Judge Talmadge does not discuss the question whether or no an unauthorized incursion by a small party of men of one nation into the territory of a neighboring nation is in itself lawful war, there being no war between the two nations; because it is beyond discussion; it is not lawful war. But he examines what constitutes a state of lawful war, or perfect war, and holds, as Mr. Johnston properly states, that acts of a certain character are required to constitute lawful war. But the way in which my learned friend reads and applies these authorities can only be appreciated by quoting from his speech. He says; "on "the question whether the circumstances proved in this case clothe "the transaction with the character of lawful war, it is to be observed "that Judge Cowen and Judge Talmadge, his critic, both agree. "'To warrant the destruction of property, or the taking of life,' says "Judge Cowen, 'on the ground of public war, it must be what is "called *lawful war* by the law of nations.' 'All will agree,' says "Judge Talmadge in his review, 'that the war which affords impu-"nity to those engaged in it, must be a lawful war.' Vattel 13, 3, "c. 4, sec. 67, says: 'A war lawful and in form is carefully to be "distinguished from an unlawful war entered on without any form, "or *rather from those incursions* which are committed either without "lawful authority, or apparent cause, as likewise without formalities, "and only for havoc and pillage.' There is no mistaking the mean-

" ing of this language. If the prisoners seek irresponsibility here, " they must show at least that they had lawful authority for what " they did. The act of war they invoke to shield them must be a " lawful act by the law of nations."

I think there is no mistaking the meaning of this language. But it certainly does not mean what he infers from it; he evidently applies these citations to the act of those men alone, and not to the nature of the war now being carried on, to which that act was incident. Now, I say it is plain that Judges Talmadge and Cowen were discussing the doctrine of immunity from responsibility to municipal law, which they held applied only to acts committed in a lawful war; and the passages Mr. Johnson cites, refer to the position of two nations with regard to each other. When Judge Talmadge says that impunity is only afforded to those "engaged in lawful war," he obviously uses the phrase as descriptive of the position of the nation to which such persons belong. And when Vattel speaks of incursions committed without either lawful authority or apparent cause, he refers to incursions by individuals or parties of men, made while the nation to which they belong is at peace with the one which they invade, and made without the authority of their own sovereign. I find these "incursions" italicized in the report; and therefore infer that my learned friend cites this passage as appropriate to the St. Albans case. Now, a single glance at the text would have shown that those incursions only are spoken of, which take place when there is no war. The question Judge Talmadge is discussing is this,—Is there a state of lawful war or not? and he quotes from Vattel to show the distinction between a war lawful and in form, and mere incursions without commissions and without authority. It is perfectly plain that he does not mean incursions incident to a lawful war, but incursions independent of any war. The instances he gives of the *Grandes Compagnies* of France, and of Filibusters, sufficiently establish his meaning. Now, what does this authority establish? Simply that there may be a state of lawful war between two countries; or that there may be incursions into a country in time of peace, by men without commissions or authority, which does not constitute lawful war. But neither Talmadge, Vattel, nor Cowen, says that a hostile incursion, by a party from one country, into the territory of another, in time of war, is of itself an unlawful war or an unlawful act of hostility. My learned friend's authority, therefore, is totally inapplicable here, because a state of lawful war does exist; and his pretensions that incursions incident to such a state, are unlawful, cannot be sustained for a moment. Such a doctrine is not to be found in books, is not consonant with reason, and is inconsistent with every principle to be found laid

down on the subject, either in the opinion of Talmadge, or in any other authority.

As to this question of lawful war, there are just two or three more authorities to which I will refer, as establishing the position I contend for. In Vattel, page 391, in the note it is said :

" As nations are independent of each other, and acknowlege no " superior, there is, unfortunately, no sovereign power among " nations to uphold or enforce the international law ; no tribunal " to which the oppressed can appeal, as of right, against the " oppressor ; and, consequently, if either nation refuse to give " effect to the established principles of international law, the only " redress is by resorting to arms, and enforcing the performance " of the national obligations, and this is the principle of just war."

In addition, I will cite a few words from Hautefeuille, page 161 :

At page 161, he says : " Sur mer comme sur terre, le belligé- " rant a le droit absolu de nuire à son ennemi par tous les moyens " *directs* qui sont en son pouvoir, et seulement par les moyens " *directs ;* il n'y a donc aucune distinction à faire à cet égard " entre le droit maritime et le droit terrestre." At page 162 : " Chez aucune nation, dans aucun temps, il n'a existé une loi, un " usage qui, sur terre, exempte de la confiscation les propriétés " privées de l'ennemi. * * * Quant aux propriétés mobilières, " elles ne sont pas plus respectées à terre que sur mer. Sans " parler des pillages autorisés par les usages de toutes les nations, " dans toutes les guerres terrestres, même dans celle de 1854, qui " fut dirigée avec tant de modération et d'humanité, les propriétés " privées de l'ennemi furent prises et détruites par les troupes " ennemies."

I think that is a tolerably clear exposition from one of the most modern continental writers on the subject of the rights of parties in war. The conclusion I draw from these authorities is this,—that the tendency of modern rules of warfare is to restrict the effects of war to soldiers in the field ; but that this does not affect the abstract rights of the belligerents, who are the sole judges of the means they are entitled to employ in carrying on the war.

But judging from the care with which my learned friends next point was elaborated, and the vehemence with which it was urged, they rely greatly upon it for the success of their application.—They say that the prisoners were guilty of a breach of neutrality ; and the consequence they draw from it is a curious one. They accuse these men of having infringed our law. They also accuse them of having committed in the United States, an offence which the authorities there consider an act of robbery. The prisoners say they are belligerents,—that they acted under a commission ; and more than that,—had direct authority for the act. The learned

gentlemen opposite reply,—supposing all this to be true, you have committed a crime against the law of Canada and Great Britain; therefore you must be extradited and punished in the United States for the crime committed there, although, if you had not violated our laws, you could not have been so extradited. That is the proposition they present to the Court.

Mr. Bethune.—I never stated so.

Mr. Abbott.—Not in that form; but that is the sense of your argument. I feel convinced that every one who hears me will say that it must assume that form, otherwise it is of no value at all. Because a breach of neutrality was committed by those men, they have lost the character of belligerents; they have invalidated the authority given them by the Confederate States; they have forfeited all the rights of Confederate subjects and soldiers. This is the position which Counsel on the other side assume.

Smith, J.—The proposition put by Mr. Bethune and the other Counsel on that side is this: that the prisoners, although belligerents in their own country, yet, having sought an asylum in Canada, have thereby lost that character. That, being here, they planned and executed an expedition into the United States from this country; and returned afterwards to Canada. And the conclusion drawn from this state of facts is simply this, that they cannot do any belligerent act at all. That any attempt to do so, is so far unlawful, that it cannot be protected by the law regulating belligerent rights.

Mr. Bethune.—That is our position precisely.

Mr. Abbott.—That is one of their positions. The Counsel opposed to us say that by seeking an asylum and residing in Canada, these prisoners lost their belligerent quality; that as a matter of fact they ceased to be belligerents, and could not carry out any belligerent enterprise against the Northern States, of whom they were the enemies by birth and by their commissions. But there is also another proposition which they submitted to the Court. There can be no possibility of escape from it, for a great portion of their authorities are intended to apply to it; namely, that because the prisoners violated the neutrality of this Province, and thus committed an unlawful act,—and my learned friends opposite cited a great many authorities to prove that an incursion from a neutral to a belligerent country was an unlawful act,—the extradition of the accused, if demanded, should be granted.

Mr. Johnson.—Not for *this* act, but for another act. All we contend for is this—that you are setting up here an answer to otherwise proved felony, and that you do not prove it to be a lawful answer.

Mr. Abbott.—Not *for this* act, but *because this* act accompanied or preceded the act for which extradition is demanded.—That is

just what I insist the other side are contending for. They argue that because these men made this raid, as they say, from Canada, they committed an unlawful act, inasmuch as they broke our neutrality; that because they committed an unlawful act *quoad* us, the United States are entitled to have them extradited, as this unlawful act deprives them of the protection our courts would otherwise afford them against the United States. It is impossible to state the proposition in any other way. A large portion of Mr. Johnson's speech is directed to this view; and in it he actually speaks of our government being unable to overlook the fact that the enterprise was, to some extent, planned and directed here. And he proposes to shew the sense our government has of its dignity, and its mode of regarding an offence against itself, by urging that very offence as a ground for handing the offenders over to a foreign country for punishment. That is virtually the proposition both of my learned friends for the crown, and of those for the United States. They have cited authorities to prove that the engaging in a hostile expedition from a neutral territory is unlawful. Here again I am able to agree with their authorities, but must utterly protest against their application. I admit that such an expedition is unlawful as regards the neutral. It is undoubtedly illegal to organize and carry out a hostile incursion from our country into the United States. But they have to go a step further, and shew us the consequence of that unlawful act. What is the effect of its illegality? Of course I do not admit, except for the purpose of this argument, that there was any breach of our neutrality; but, I say, supposing that the case which my learned friends put, be established in the clearest possible way; suppose that those twenty men organized at St. Johns, armed themselves there, thence crossed to the United States and made their attack on St. Albans, Mr. Young being, at the time, at their head, —taking this hypothetical state of things, the prisoners undoubtedly did what was illegal *quoad* us; they were guilty of a gross outrage upon us; and their Government, if they authorized it, committed an offence against Great Britain, and gave her the right of demanding apology and redress, and also of punishing the offenders if found within her borders. So far as I have now stated the law applicable to this supposed state of things, my learned friends' authorities exactly confirm my views. But my learned friends insist that there are further consequences attached to this act of disobedience to our laws, and that they, as representing the crown and the United States, have a right to make that disobedience an argument for extradition. Now I assert and shall presently prove, that the United States Government have nothing to do with that breach of our laws—nothing whatever to say in the matter; and that it does not rest within her rights to say before a court of law, that Great Britain must enforce the

law which prohibits such proceedings. If she has any such right at all, it is merely a right of remonstrating with the Government of Great Britain. But she has no right before our courts to prosecute such an offence, still less to urge it as a reason for handing our criminals over to her for punishment. The question is a very simple one for us. The prisoners have violated our law; and they are charged with another offence to which their belligerent character is a good defence. Are we to refuse them the benefit of that defence because they have offended us in another respect? I insist that we should adopt the proper constitutional remedy; punish them for the crime they committed here, in the mode authorized by our laws and as they justify us in doing. And I hope it may be a long day, either in this or any other matter, before we refuse to exercise our proper constitutional authority; or become so degraded as to deliver over men in the position of the prisoners, to their natural enemies, for a mock trial, as a mode of vindicating our honor and dignity. Such a course might avenge us, but it would be grossly unjust and dishonorable.

Contrary therefore to the pretensions of my learned friends, I submit as a proposition which it is utterly impossible to get over, that a breach of our law has no bearing whatever upon, or relation to, the act done at St. Albans. It is that act and that act alone, which the United States have a right to complain of. They can only demand the extradition of these men, because, on a certain day they assailed, pillaged, and attempted to burn, a town of theirs, twenty miles from our border. Their demand for extradition must rest on this alone, and not upon anything that took place in our country, either before or after the raid. In short, it is not because these men committed misprision of treason against Great Britain, that they are liable to be delivered over to the United States for an act committed in their territory.

The pretensions of my learned friends in this behalf do so shock all my preconceived ideas of law and of justice, that I think I may properly call for an authority, if there be one, which declares, that because an act of hostility committed by one belligerent within the territory of another, is complicated with the breach of the neutrality of a third nation, the belligerents offending against the neutral nation, are thereby deprived of their rights as belligerents *quoad* their enemy. We have had a good many citations, it is true, but they stop far short of this pretension. Those Mr. Bethune submitted on this point, had reference to captures in maritime warfare, made either in neutral waters or directly from such waters, the capture as it were taking its inception in neutral waters; and he cites them to show that such captures are unlawful. Here, again, strange to say, we agree about the abstract law. I admit

that such captures are unlawful in one sense; that is, they are voidable, but not absolutely void. But do his authorities show that the persons making such captures, were ever held amenable as pirates for the captures so made? If these authorities sustain him at all, they must go that length. If they do not, they are worthless to him. If the violation of neutrality committed by such a captor, takes away from him his belligerent character, and reduces him to a mere pirate, subject as such to the municipal law of the country from which he made the capture, then the authority is in point; and the prisoners, in like manner, will be converted by the effect of a breach of our neutrality, into mere robbers, liable to be extradited and tried in Vermont. But the mere statement of such a monstrous notion of law should suffice to refute it. In reality, is there a case, a dictum, or an opinion stated in any work that has been referred to, tending to show that, because such a capture was illegal and would not vest any title in the captor, that captor was a mere pirate? Or that he could be made amenable in any way to the courts of the power whose property he had been taking as his prize, or be delivered up to such power for any such trial? Is there anything which establishes that position? My learned friend Mr. Johnson laughs; but I ask him to cite some book in favor of such a view.

Mr. Johnson.—It does not follow that I am laughing at you. True, there is no case in which a party has been so demanded, because it was an act of maritime war; but in case of robbery or forgery, would the party not be given up?

Mr. Abbott.—My learned friend's laughing is of no consequence, of course, further than as I understand it to express dissent; and if he does dissent from what I am now saying, I ask him again to cite an authority, or book, or opinion, justifying such dissent; and I suppose my learned friend will have no difficulty in doing so, if there be any such. However, he does not; but admits that there is no case in which a belligerent making a capture, declared illegal because made in neutral waters, was ever demanded by the other belligerent. But he says this is maritime warfare in which the rules are different. Well, this is one of the particulars in which my learned friends differ a little in their views of the law. Mr. Devlin cited authorities proving that there was no difference between warfare at sea and on land.

Mr. Devlin.—The very opposite; there is a difference between them.

Mr. Abbott.—It is possible it may have been Mr. Bethune who cited it; certainly, one of them did.

Mr. Devlin.—Denied it.

Mr. Abbott.—On reflection I am certain that Mr. Devlin cited

an authority showing that robbery by land, and piracy at sea were the same; while Mr. Bethune quoted another to prove that different rules governed operations by land and by sea. And I could turn to both of them in my notes, if it were worth while. But in reality a reference to either Vattel or Halleck, which appear to be the books most frequently cited on the other side, will show that the principles applicable to these two kinds of warfare are exactly the same; although in the case of warfare by land, the abstract right of plunder and pillage is restricted in practice, while at sea it prevails in full force. And the quotation just made from Hautefeuille is precisely to the point. In fact, as the other learned gentleman put it, piracy and robbery are convertible terms; the one being the same offence by land that the other is by sea. Mr. Johnson admits that there is no case in which it has been held that the captor in such instances as I have spoken of, and as his authorities refer to, was held punishable as a pirate by the municipal tribunals of the other belligerent. There is not only no case of this kind, but the possibility of such a thing has never been hinted at in any book. On the contrary, in the very books cited by the other side, it is laid down authoritatively, that the injured belligerent has nothing whatever to do with the matter; that the belligerent of whom the ship was unlawfully captured, has no right to say one word on the subject. It is the neutral alone who deals with it, and he does so to vindicate his own dignity and sovereignty. It is he who says, you shall not come within my borders, and use them as a vantage ground from which to make war on my neighbor. And if you do, I will not acknowledge the validity of your capture, and will force you to restore it. The man who makes the capture is not liable to be punished by the authorities to whom the property belongs, nor can their complaint against him be listened to in the courts of the neutral. It is not at their suit that the capture may be annulled by reason of its illegal origin; for that illegality does not concern them.

The Court here adjourned for an hour, and at 2 o'clock Mr. Abbott resumed:

I proposed, when we adjourned, to examine how far the authorities cited by the Counsel for the Crown and for the prosecution, sustain the position they have taken, with regard to the effect of the alleged breach of neutrality by the prisoners, upon their acts at St. Albans. The authorities quoted in support of their view certainly are to the effect, that an incursion from a neutral State into the territory of another is unlawful, but but they go no further. They cited Mr. Wildman, who says in distinct terms that captures within neutral territory, or made by expeditions proceeding from

neutral territory, are illegal, which is the precise doctrine my learned friends rely on. "But," "he adds, "*not with respect to the enemy.*"

The citations from Azuni, Burlamaqui, Wheaton, Phillimore, and Kent, are all to the same effect.

This, then, is undoubtedly the correct doctrine, and it cannot be disputed. To set the matter at rest, I admit, in the words of these citations, that "hostilities cannot lawfully be exercised within the territorial jurisdiction of the neutral state" (Wheaton 713); that "captures made by the belligerent cruisers within the limits of a neutral state are illegal"—that they are illegal also if the expedition which makes them "proceeds from neutral territory;" that "no proximate acts of war are in any manner to be allowed to originate on neutral ground:" "that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful." I do not think I have omitted one proposition of law to be found in all the authorities cited on this point, and for the third or fourth time I find myself receiving my learned friends' views of the law, absolutely as axioms, which I have neither the ability, nor the desire to dispute: but demanding again and again; suppose the law is as they state it, does it bear out their application for extradition? I say it does not, and I contend that all their authorities in this connection fall far short of any such pretension. See, for instance, the case of an illegal capture made in, or from, neutral territory. The consequence of such a capture is that the prize courts declare the capture null, and order the property to be restored. But not that the parties who made it are guilty of any offence against the belligerent, because they made a capture in neutral waters; or that therefore they must be held to be *hostes humani generis*. I venture to say that no suggestion can be found, of the possibility of a doctrine of this kind being entertained by any nation. But if the capture be interfered with, and the property be ordered to be returned, it is not because of the injury to the belligerent. It is only in virtue of a complaint by the neutral, of a violation of its sovereignty by the offending belligerent, that the capture can be annulled. It is the neutral power alone which can interfere to procure the return of property captured within its jurisdiction; and the only recourse a belligerent nation has against a neutral for permitting the violation of its neutral jurisdiction, is to call its government to account for so doing; and to make the refusal of satisfaction a *casus belli*, if it thinks proper.

Chancellor Kent states the doctrine very clearly on the page next after those cited by my learned friend on this point. He says (Vol. 1, p. 121). "It belongs solely to the neutral govern-
"ment to raise the objection to a capture and title, founded on a
"violation of neutral rights. The adverse belligerent has no right

" to complain, when the prize is duly libelled before a competent " Court. If any complaint is to be made on the part of the cap- " tured, it must be by his government to the neutral government, " for a fraudulent, or unworthy, or unnecessary submission to a " violation of its territory; and such submission will necessarily " provoke retaliation."

The whole of the discussion in the three or four preceding pages of Kent, which my learned friends opposite cited, has reference to the effect of the capture of a vessel within the limits of the neutral jurisdiction, in so far as regards the transmission of the title to the captured ship, or effects; with regard to the neutral—not with respect to the belligerent. The belligerent is not stated to have any right to find fault with the proceedings of his enemy, or to demand, that the capture should be declared illegal. But simply, that the capture within the neutral territory, is illegal *quoad* the neutral power, and that the latter may vindicate its sovereignty by refusing to acknowledge the validity of the title claimed to have been conferred by that capture; and may order the restitution of the property to the belligerent from whom it had been taken. The learned Counsel opposite quoted also copiously from Halleck. But the passages he cites are merely repetitions of the doctrines already cited from " Wheaton " and " Kent," adopting the very words of those authors. I must say that I fail to perceive the advantage he proposes to gain from them—for in every case they state the consequence of such illegal violation of neutral territory, and that consequence never bears any semblance to the one he seeks to draw from this. For instance at page 525, General Halleck speaks of the difference between the asylum which ships may obtain in neutral ports, and that which troops are entitled to. And this distinction was read to us with great unction. But in what way does it aid my learned friend's view? It is not there stated, that when refuge is sought within the borders of the neutral, by belligerent troops, those troops are to be arrested and handed back to their enemies. But it is laid down that the neutral is to insist upon their being disarmed; upon the booty being returned, and the prisoners released. I find nothing here declaring that those troops are to be treated as robbers, and handed over to the ordinary municipal courts for punishment, which is the remedy my learned friends desire to sanction by this authority, if they have any object at all in quoting it. I find also among these citations from Halleck, ample confirmation of my view as to the exclusive right of the neutral to make a violation of neutral territory a ground for annulling a capture; at which the Counsel on the other side made many signs of dissent when I stated it. It is laid down distinctly at p. 531, " on the principle,

" that *the neutral state alone has been injured* by the capture, " that the hostile claimant has no right to appear *for the purpose of* " *suggesting the invalidity of the capture*." And he says that it is the right and duty of the neutral to restore booty captured in violation of neutral rights, if it comes into the possession of the neutral state. But the reference to p. 629 of Halleck is more surprising than any I have yet seen. He there lays down the sufficiently simple rule that if a neutral neglects or refuses to maintain the inviolability of its territory, it is a *casus belli*.

Mr. Bethune.—I cited that in support of the proposition, that if you were to maintain that an act of this kind was legal, it would be equivalent to an act of war against the United States.

Mr. Abbott.—It is a fallacy, which I have repeatedly exposed, to argue that your Honor must either hold that these men acted legally, or order their extradition. The two propositions have no relation to each other. The rejection of the one has no bearing whatever upon the rejection or acceptance of the other. The question is not whether or no they acted illegally here; nor can it be, unless it be shewn that the legal consequence of illegality is extradition. Would they not have acted illegally if they had committed larceny, or swindled? Then would my learned friends say, you must approve of the larceny, or you must extradite them? The whole question is whether or no they committed robbery in St. Albans; and holding that the offence they committed there was not robbery is surely not "equivalent to an act of war against the United States." There would seem to me to be a strange confusion of ideas running through all this argument. Breaches of neutrality, the ordinary criminal law, hostile incursions, the powers and duties of Courts, and the powers and duties of Governments, seem to be all jumbled together in inextricable confusion. If my learned friend had said that the sanction of the British Government to acts of this kind would be a *casus belli*, I could have understood him; but when he speaks of your Honor's decision as to the character of these men's acts, examined with reference to a special statute, as being an act of war, I confess my entire inability to appreciate his view. The matter seems to me very simple. Every belligerent has the right to demand that a neutral State shall maintain the inviolability of its territory. And every neutral State acting honorably will endeavor to do so. But how? By extraditing men who violate its neutrality, to be dealt with by their enemies; or by indicting and punishing them itself? Is there a nation in existence that has ever stooped so low as to deliver over to foreigners for punishment, offenders against its own laws? If we are bound to maintain the inviolability of our neutrality, and I say that we certainly are; in God's name let us do so.

And we are doing so. We have taken means, and at great expense to this country too, to maintain our neutrality inviolate. And this incursion and the capture of the *Philo Parsons* have been made the occasion for doing so. We have taken the most energetic preventive measures in our power; we have passed extraordinary laws, giving to the Government extraordinary powers, in aid of our other efforts, and moreover we have under our laws provisions under which those who commit such acts can be punished. Not by extraditing them, but by submitting an indictment against them to the Grand Jury now sitting, as my friends opposite should have done, if they thought them guilty of a breach of our neutrality; in order to their punishment here; not by leaving our sovereignty and our authority to be vindicated by our neighbours.

Mr. Carter.—The law officers of the crown do not require to be told what their duty is in this matter. We never pretended anything so absurd as that parties could be extradited for a mere breach of neutrality; but for committing two offences, a breach of our neutrality and another offence.

Mr. Abbott.—I do not pretend to dictate to my learned friend what his duty is, but I find that in the books it is laid down as a proposition of law, as a constitutional maxim, as a doctrine comporting with the dignity of a sovereign State, that if a person be found within its limits charged with two species of crimes,—one committed within, and the other beyond its borders; he must first be dealt with for the offence committed within its own jurisdiction, before being handed over to a foreign State to be punished for the crime committed there. I tell them that such is the law of this Empire. And I say, that if they argued in England that these men were deprived of their right of asylum, and should be extradited because they committed a breach of our neutrality; or as the learned crown officer puts his most extraordinary proposition—because they "committed two offences, a breach of our neutrality and another," they would be told—if you pretend they committed a breach of neutrality they must be committed for trial for that, before we can hear a demand from a foreign power for extradition for any other offence. And that is British law, and it is in accordance with British spirit, and British feeling. That is the law, whatever this government of Canada may think on the subject.

Mr. Devlin.—That has nothing to do with the case.

Mr. Abbott.—That is exactly my opinion. No such principles or sentiments have had anything to do with the conduct of this case. But, returning to the point under discussion, I shall refer to an authority of some value. I cite 2nd Ortolan, 299 and following pages where he says:

" L'illégalité des actes d'hostilités exercés dans les eaux terri-
" toriales d'une puissance neutre, entraîne, comme conséquence
" directe, l'illégalité des prises faites en dedans des limites de ces
" eaux." And after citing the passages from Wheaton already referred to, expressing the same doctrine, he adds :—" Nous adhé-
" rons complètement à cette doctrine et à cette jurisprudence pra-
" tique. * * *"

Here, of course, the rule is asserted which my learned friends opposite have contended for with such vehemence, namely, that the violation of neutral territory is illegal. But what is the consequence? I shall read this passage as exhibiting it:

" Puisque la nullité des prises ainsi faites n'est rien d'absolu,
" qu'elle est subordonnée aux réclamations de l'Etat neutre,
" le fait est remis à l'appréciation de cet Etat. C'est à lui à
" juger s'il y a eu, ou s'il n'y a pas eu, véritablement atteinte
" portée à sa souveraineté ; s'il doit à sa propre dignité et aux
" obligations d'impartialité que lui impose sa qualité de neutre, de
" réclamer contre cette atteinte et de demander que les consé-
" quences en soient annulées ou réparées, ou bien s'il peut garder
" le silence et n'élever aucune réclamation." And at page 229, in speaking of the exercise by the neutral of its right to return illegally captured property if found within its jurisdiction, he says:
" Il ne faut pas croire qu'en cela l'Etat neutre se rende juge de
" la validité ou de la nullité de la prise, au point de la querelle
" des belligérants, et des lois qu'ils doivent observer dans leur
" guerre maritime. Cette question est entièrement hors de son
" ressort. Mais si des actes d'hostilité ont eu lieu illégitimement
" dans les eaux qui sont soumises à sa souveraineté, il est en son
" pouvoir de faire cesser les effets de ces actes ; en usant de ce
" pouvoir, il ne fait que maintenir son droit, que prêter main-forte
" à sa propre cause."

M. Hautefeuille promulgates a similar doctrine, Vol. I, at pages 334, 335.—

But I think it is possible for us to find examples nearer home, which will shew how far the violation of neutral territory affects the act of one belligerent against the other. We can find recent precedents both in America and in England, which settle the question in the sense in which I understand it. We are all familiar with the fate of the " Florida." Now, she was captured while actually under orders as to her cruise against the Federals, from Com. Barron, the diplomatic agent of the Confederate States, at Brest. I hold in my hand the letter, written and dated in Brest, in which he gives minute and detailed directions to Lieutenant Commander Chas. S. Morris, of the Confederate States Navy ; he then being also in Brest, with his ship ; as to the latitudes he is to cruise in, the period

during which he is to remain in one place or another, his conduct towards neutrals; and winds up by ordering him, in case of doubt, to recollect that his chief duty is to do all the injury he can to the enemies of his country.

These are instructions issued to the commander of a Confederate States steamer, then in a neutral port; by a Confederate States agent, then resident in a neutral port. This steamer was afterwards illegally captured by the United States war steamer "Wachusett," in the neutral port of Bahia. And these instructions from Com. Barron were found on board of her. A remonstrance was immediately addressed to the United States Government by the Brazilian Government, complaining of the gross violation of her neutrality committed by making this capture; whereupon a species of apology was made by the United States Government. The "Florida," in the meantime, had been sunk and could not be restored, but her officers and crew were released, and sent, I think, to England. Now, supposing it to have been a violation of neutrality for Com. Barron to issue orders for a cruise against the commerce of the United States, while he was resident in France; which occupies the same position that England does toward the belligerents—how is it we never heard a word of complaint against Mr. Barron from the Government of the United States, nor any demand upon the French Government that he should be sent out of France? He has never been interfered with for his conduct in this respect, and still resides in that country. The position of Mr. Barron in France, and of Mr. Clay in Canada, appear to have been exactly similar, and what they did was exactly the same thing. And if there was a violation of neutrality in the one case, there was in the other. But what is more to the purpose of this argument; how is it that Capt. Morris was treated as a belligerent? My learned friends would say, his expedition was authorized in neutral territory, it proceeded from neutral territory, (the "Florida," in fact, never saw any other), and it was thereby deprived of all character of lawful hostility. If the St. Albans raiders lost the character of belligerents, because they, or some of them, at one time or other passed through, or came from Canada; how is it that the officers and crew of the Confederate cruiser were not treated as pirates, because they started from France and received their orders there?

If my learned friend's pretensions are correct, the Florida was a pirate; and her officers and crew could have been tried at Bahia and hanged, as *hostes humani generis*, without rendering it necessary that the United States should incur dishonor, and submit to humiliation, for the privilege of destroying her. If the principle contended for by the opposite Counsel be correct—that the reception

within a neutral territory, of orders for a hostile expedition, takes from that expedition the character of lawful hostility, and from the parties engaged in it that of belligerents; then Morris and his crew were as much pirates as were Young and his party robbers. And we may go still farther. If a capture by a belligerent in neutral territory is illegal in the sense in which my learned friends say it is, namely, so that the belligerent character of the captor is destroyed —and so that he becomes liable as an ordinary robber or pirate to the municipal tribunals of the country; then the captain and officers of the Wachusett were guilty of piracy for their capture of the Florida in the harbour of Bahia. There is not on record in all the cases cited by my learned friends, so gross a breach of neutrality as that committed by the Wachusett; nor is there a case in the books, which so completely exhibits every element of illegality in its most glaring form. And no one denies that it was illegal. But would any one in the face of the world have assumed the position that because of that illegality, the Wachusett's people were deprived of their character as belligerents? The pretension would have been received with ridicule by the civilized world—and yet it rests fully and squarely on the proposition of law my learned friends are insisting upon.

But we have other cases in which such questions have come up, equally conclusive in their results. There is the case of the Patriota, in which United States citizens were concerned in the year 1817. This was a vessel built in the United States, then strictly neutral, with American money—manned by citizens of a neutral state, and neither she nor they ever saw the country on whose behalf she was cruising as a privateer, namely the revolted Spanish Colonies. She captured a Spanish vessel on the high seas, and complaint was made to the American Government by the Spanish Minister. Here was a flagrant case of violated neutrality—and the persons engaged in it were exactly in that position, which my learned friends contend would justify Young's extradition. If the doctrine be correctly expounded to us, they were pirates—they had no belligerent character, for if they ever possessed any, they lost it by illegally originating their expedition in neutral territory. The correspondence is in my hand and I will read enough of it to shew its purport.

(Reads Correspondence from New York Albion, October, 1817).

So that it appears the American Government found nothing which deprived those men of the position of belligerents, though the vessel was built in an American port, was owned by American citizens, and manned by an American crew. There was no charge of piracy made by Spain, nor would the United States have listened to such a pretension. The position they took was simply this—if these men come within our jurisdiction, we will punish them for

breach of neutrality; and we will restore the goods if they fall within our power. "That is all the universal law of nations demands of us," says Mr. Adams.

In the late English cases; those of the Gerity and the Roanoke; we find no such doctrines as those urged by my learned friends opposite. It was not argued there, that because the party who seized the Gerity went on board at a neutral port, and because the expedition originated there, Ternan and his party were pirates, or that their character as belligerents was affected by that circumstance. Nor was such a pretension urged in the case of the Roanoke, whose captors also entered the vessel at, and sailed from, a neutral port.

Mr. Bethune.—The captors of the Gerity embarked at Matamoras, but never touched the vessel till she was on the high seas.

Mr. Abbott.—So in this case, the captors of St. Albans entered the American territory at the Province line, but never touched the person or property of a Federal till they arrived at that town. As regards the Roanoke, the Gerity, and the St. Albans raid, the principle is the same, as far as the alleged breach of neutrality goes. If it be said that the captors of the Roanoke and Gerity were upon *quasi* American territory—when they were upon an American vessel; the prisoners had to pass through twenty miles of American territory before they reached the scene of attack.

But surely it will not be contended, that the St. Albans raiders, by invading American territory from Canadian ground, were placed in a worse position, as regards belligerency, than if they had been actually British subjects. And I say, that if they had actually been British subjects, they would have had a right to make this incursion,—not *quoad* their own sovereign, by whom they would have become liable to punishment for a breach of neutrality; but as regards the other belligerents.—British subjects taking part in this war do so at their peril, as regards their own laws, but they do not thereby become liable to be treated as robbers or pirates. In the debate in the House of Lords on the Queen's proclamation, in 1861, Lord Derby, with Lord Brougham and other law lords, took particular pains to point out that British subjects in the service of the Confederates would not be liable to be regarded as pirates. And the declarations of these statesmen and lawyers were most clear and most positive, that no view of the law which the United States might take, and no enactment they might pass, would be regarded by the British Government as justifying any pretension, that British subjects under such circumstances could be looked upon as pirates. So it seems that even a British subject would be entitled to the protection awarded to belligerents, if taken while acting under the commission of one of the contending parties, though liable to pun-

ishment by us for so doing ; and, if so, *a fortiori*, a man who was not a British subject, and in fact had not even acquired a domicile here, would be entitled to all the immunity which his national and belligerent character could afford him. This point is specially referred to by Chief Justice Cockburn in the Gerity case. He says : " I concur in thinking that persons so acting, (with the intention of acting on behalf of one of the belligerent parties), " though *not subjects of a belligerent state, and though they may be violating the laws of their own country*, * * * cannot be treated as pirates.' There is no possibility of getting over this express *dictum* of the Chief Justice. For if they are not pirates, they are belligerents. If they were deprived of their belligerent character by having violated the laws of neutrality, or by reason of any other fact, they would be mere pirates—or robbers, as the case might be. But Judge Cockburn declares they are not pirates on that account. In the Chesapeake case, the same doctrine is laid down by Judge Ritchie, as I have shewn by the citations made at an early stage of my argument. So your Honor perceives that the Chief Justice of England in the one case, and Judge Ritchie in the other, did not consider that a breach of neutrality, though committed by a neutral ; though the offence in him is more flagrant than in a foreigner ; and though his committing it might expose him to severe punishment ; would alter his position *quoad* a belligerent, so as to entitle the latter to treat him as a pirate or robber.

I will close this branch of the subject, by citing a few passages from " Historicus," who treats this very point in a manner that can leave no doubt of its true bearing upon the mind of any one.

At page 149 he says: " There are no questions which at the present time more deeply engage the public mind than those which concern the rights and duties of neutral governments, in their relations with belligerent powers. * * * Among these is the nature of the relative rights and duties which may arise, as between the respective parties, out of a violation of the rights of neutrals by one of the belligerents." Again at page 150 : " The elementary and universal principle which lies at the root of the whole question, is the absolute title of the neutral sovereignty to immunity, whether as regards its territory or its prerogatives, from the interference of belligerent operations of any kind. A violation of this immunity is one of the clearest and highest offences against public law. For one belligerent to pass through the neutral territory without the leave of its Sovereign—to carry on hostile operations within the neutral jurisdiction—to levy soldiers or sailors, or to equip vessels of war within the neutral soil—are familiar instances of violation of the rights of neutral sovereignty. They are acts eminently unlawful, and the neutral goverment is entitled to prohibit, and, if neces-

sary, to avenge their commission." Again at page 151: "To levy men or to equip armaments within the neutral jurisdiction is to convert the sanctuary of neutrality into the theatre of war. Such proceedings are, therefore, upon both grounds in the highest degree unlawful: municipally as between the Sovereign and the subject, internationally as between the offending belligerent and the offended neutral. * * * Every State passes laws to protect itself, and not to protect other nations. It is for this reason that the English Government has constantly refused to enact laws, either penal or otherwise, at the instigation of other Governments, who suggested that they might be essential for their security. The object of the statute book in these matters is to *prevent foreign nations injuring us, not to protect them one from another.*" Again at page 152: "So far the matter is clear enough. A difficulty, however, begins to arise when we come to consider the relations which this violation of the neutral sovereignty creates, as between the neutral, and the other belligerent who may have been indirectly injured by that violation. Upon this point I have come across a great deal of loose and inaccurate talking and writing, which makes it desirable and necessary to ascertain and establish the strict law of the case. The fundamental proposition which I wish to impress on your readers' attention, (the importance of which I shall presently show) is that the right which is injured by the act of the offending belligerent, is the right of the neutral government, and not that of the other belligerent. The important consequence of this proposition is, that *it is the neutral*, and not *the belligerent*, who is strictly entitled to claim or to enforce the remedy. When this point is once properly apprehended, the solution of the question becomes simple and satisfactory." Again at page 154: "But perhaps the most instructive illustration is to be derived from the practice in the case of captures made by a belligerent in violation of neutral rights. A capture made within the limits of the neutral jurisdiction *is void*, but *it is void only at the suit of the neutral*. If the neutral does not choose to interfere to assert his right, the capture is valid as against the other belligerent. In short, the capture is not void, but voidable at the election of the injured party, viz: the neutral state—a distinction the importance of which every jurist will appreciate."

Such quotations as these explain themselves. They are at once text and commentary. They shew the precise bearing and effect, of the violation of our neutrality by these prisoners, if any such violation has taken place, which, it is well understood, I utterly deny. They shew that such violation does not render them liable to be regarded as robbers; and that if the Federals claim to have been injured by their acts, they can only seek reparation for that injury from the Government, and not from the Courts. If, as Mr.

Harcourt tells us, no foreign power has a right to complain before our Courts, of acts affecting our neutral rights, then all the arguments based on a breach of those rights, by which the Federal Counsel here have sought to induce your Honor to extradite these men, must go for nothing. They can receive no consideration when urged by the representatives of a foreign state. They have no right to use them; they are not injured, but we; our neutrality laws are "made to protect, not them, but us." Who is it then who argue for the extradition of these prisoners because they have violated our neutrality? or if they are particular about phrases, who urge that the violation of our neutrality by the prisoners has rendered them liable to be extradited? It is our own Government; the Government of this country, in which these men have sought an asylum; which sends its officials here to insist that because these men have violated our laws, (as they say) they are to be held liable to extradition, though otherwise, as belligerents, they would be entitled to protection. It is the Crown officers who come here pretending a kind of impartiality, but in the same breath declaring it to be their duty to use their best endeavors to have these men extradited. And in the performance of that duty it is they who would deny to them the protection of their commission; who would deny to them even the right of exhibiting it; although the Sovereign they profess to represent, has solemnly proclaimed the right of these men to those privileges. It is in the name of our Sovereign, who recognizes the belligerent character of the Confederates, that your Honor is asked to deny to these Confederate soldiers the rights of belligerents! And it is in the name of that Sovereign, whose laws they say these men have violated, that they ask you to send them to a foreign country to have that violation avenged. It is the first time that the name of the Sovereign, and the honor of this country have been so desecrated and degraded, and I fervently hope that it may be the last.

If I were to examine this case from another point of view, I believe I should not have much difficulty in shewing that the Treaty could not be held to apply to these prisoners, regarding them as rebels and therefore as political offenders engaged in an act of treason against the sovereign power of the state.

Mr. Devlin.—They were soldiers when they commenced; now they are politicians.

Mr. Abbott.—I believe insurrection and rebellion are usually regarded as political offences. The rule that political offenders are not considered to be comprised within the provisions of extradition treaties, has already been laid down as one of the propositions on which we rely, and has been sustained by the citation of numerous authorities. I will refer however to the reasons for this exclusion,

which I find given with great force and clearness in Sir George Cornewall Lewis' little treatise. Mr. Johnson correctly stated that the propriety of agreements for extradition, rests on the presumption of an impartial trial in either country. Sir G. C. Lewis uses this theory as a reason why extradition should never be extended to political offenders. He says:

"If all Governments were perfectly equitable and dispassionate, "the principle might safely be applied to political offenders; but "in the prosecution of political offences, the Government may be "considered as an interested party, and therefore another Govern- "ment is indisposed to give up persons charged by it with crimes "of this description."

And he points out that in cases of "civil war," of "revolution," &c., extradition is refused by any State "which does not fear the displeasure of the Foreign Government interested in the question." And he quotes with approbation Lord Palmerston's declaration that a Government conceding it, would "be deservedly and universally stigmatized as degraded and dishonored."

While referring to this book I must notice an extraordinary use which my learned friend Mr. Johnson has made of it, and I am glad he is here while I speak of it. He quotes it at page 52, in support of his pretension that a Judge should not fully investigate the charge before granting extradition; and he finds the author to agree so thoroughly with him, that he quotes a large part of the paragraph: "What then," he asks, "is the duty of the magistrate?" I give his own answer entire.

"Sir Cornwall Lewis (he says) puts it thus clearly and explicitly: 'In order to render a system of extradition effectual, the amount of proof, and the formalities required, should be as small as is consistent with the prevention of abuse. The essence of the system is, that confidence is reposed in the foreign government and in its administration of criminal law. The assurance of that government ought to be the chief guarantee against abuse. If, therefore, it claims any fugitive through the accredited diplomatic channels, and gives a reasonable proof that there has been a proper investigation by the officers of police, and the functionaries conducting the preliminary stages of judicature, and that this investigation had led to the conclusion that the person in question is guilty of the offence charged against him, it is desirable that the extradition should take place, upon proof of identity of the party, and without any full investigation, such as a magistrate would make for the commitment of a prisoner in this country.'"

And again he says: "The recognition of the criminal law of a foreign state, and the confidence in its regular and just administration, which is implied in a system of extradition thus carried into

effect, is paralleled by the established practice of this and other countries with respect to the civil law."

"In fact," he says: "the rule, thus clearly stated, has been allowed in practice wherever questions under the Treaty arose."

I have quoted this at length, otherwise it would appear to be incredible, that the "rule thus clearly stated," which "has been followed in practice wherever questions under the Treaty arose" —is actually the statement made by the author, of what the law and practice are *not*,—the same paragraph containing a directly contrary statement, which he declares represents what the law and practice *are*. This explicit description, which Mr. Johnson cites as exhibiting in the words of Lewis the condition of the law ever since the Treaty came into force, happens to be a description of what Sir G. C. Lewis thought ought to be the law, but which he clearly states in the same paragraph is *not* the law. The passage cited by Mr. Johnson is the latter half of a paragraph, which, in the previous portion of it, refers to the Ashburton Treaty, and explicitly finds fault with the necessity for proof under that Treaty, and for an investigation before a magistrate by means of witnesses examined on the spot. And after pointing out all that is requisite under its terms, and declaring that the process is both costly and difficult, he goes on to shew how he considered such a law ought to be framed, and *it is this expression of his idea of how the law should be changed*, that Mr. Johnson cites with such approbation, and with the authority of Lewis' name, as a clear statement of what the law actually is! So extraordinary a perversion of authority is not easily accounted for!

But returning to the distinction between ordinary crimes and those of a political character,—as for instance, those arising out of a civil war,—I have been very forcibly struck with the illustration of it by Mr. Lord, a distinguished advocate in New York, who who was one of the Counsel for the defence in the Savannah case. He argues that to constitute a crime against municipal law, an act must be such an one as everybody condemns, and is recognized by all the world as an offence against the law of nature,—an offence which would be punished equally at the place where the crime was committed, and where the party was tried for it. And he points out that it would be shocking to the common sense of mankind to hold that an organization of ten millions of people could not justify even the killing of a chicken without a charge of petty larceny; that for every shot fired and man killed there could be a trial for murder, &c., &c. (Reads from Savannah case, pp. 121 *et seq.*)

And in fact there can be no doubt but that the prisoners are regarded throughout the United States as political offenders. The evidence of record shows that they were such, if offenders at all. But there is

a kind of universal publicity and notoriety given to the fact throughout the United States, which has its value. We know that in the first official notice of the attack, which is to be found in the celebrated proclamation of General Dix, they were spoken of as "rebels,"—as "rebel marauders:" and orders were given to shoot them down wherever found. The placard issued by the St. Albans banks designates them in a similar manner. Every newspaper in the Union, and every Federal organ here, made their nationality one of the grounds of complaint against them. Mr. Sumner, in his place in the Senate, recognized the political character of the expedition, insisting that its real purpose was to embroil England with the Federal States; and the chief law officer of the Crown for Upper Canada, while so far forgetting himself as to state in his place in the House his opinion on this matter, although it was then under investigation before your Honor; attributed the greatest blame to the persons who, with political views, had laid the plot which the prisoners had carried out. The universal clamor in the States against this country, for the alleged breach of neutrality, rested entirely upon the political character of the incursion; for if it had not that character, it was no violation of neutrality—it was a common robbery. Ordinary robbers do not rise to the dignity of violators of neutral rights. And it will even be found, that in the discussion of the application of the prisoners for permission to send to Richmond for evidence, His Excellency the President of the United States, himself characterized them as rebels. Assuming it to be true, then—as the whole press of the United States, her generals, her senators, even her highest and most august executive officer declare it to be with one voice—that these men are rebels, who, on the 19th of October last, were engaged in an act of rebellion against the State to which they owed allegiance; I respectfully submit that your Honor must hold that to rebels seeking refuge here from the consequences of rebellion, the Extradition Treaty does not apply.

But my learned friend Mr. Johnson, fearing, perhaps with justice, that it may be found at least doubtful that any case has been made out against the prisoners, on the charge of having been guilty of robbery within the meaning of the Treaty; reproaches them with the inconsequent character of the defence they set up, in hopes, probably, of persuading them that they should submit to be hanged, rather than to be saved by erroneous ratiocination. He says, "The position of these men is absurd and illogical in the extreme: they say they have an excellent defence; are able to justify this raid by the authority of their Government; that their act was a belligerent one, and not liable to the municipal law of any country, yet they do not wish to go to the United States and

be tried!" And the other Counsel have touched, more or less, upon the same theme, extolling the justice of the United States Courts, and assuring your Honor of the perfect impartiality with which the prisoners would be tried. Now, I would like to know what kind of trial these men could really expect in the Federal States. I admit that the Courts in the United States have long been eminent alike for their purity and impartiality, for the learning and ability of their Judges, and for the practical sense and vigor of their administration of justice. They probably still deserve the same high character and position as to all matters unaffected by political considerations; but I must be pardoned if in those respects, I am led by report to fear that their ermine is not without stain. But without casting upon them any imputation of any kind, it is probable that they *cannot* fairly try the defence set up by the prisoners. In other words, could the prisoners' defence be recognized as good in law before the Federal Courts, supposing it to be fully proved? Mr. Carter has furnished us with the means of answering this question. The authorities he cited to show that we could not recognize Lieut. Young's commission, tell us, that it belongs alone to the executive Government of a country to decide whether or no a State shall be recognized as a belligerent, or as a sovereign State. Well, the executive Government of the United States have not recognized the Southern States, either as a belligerent or sovereign State; and consequently the Federal Courts cannot recognize their commissions, or consider the acts of their soldiers as belligerent acts. My learned friend, Mr. Carter, will not deny the force of this argument; for as he contends that your Honor cannot look at this commission, though England has recognized the belligerent character of the Southern States; he must join me in this argument and say, *a fortiori*, the Federal Courts cannot look at this commission, because the Federal Government has *not* so recognized the South. This is one of the instances in which the "plain," "incontrovertible," and "obvious" propositions of my learned friends are reciprocally rather injurious; and are likely to share the fate of other elaborate but fragile productions, when brought in rude contact with each other! It can, in fact, be established that a plea of belligerency, and of justification by instructions from the Confederate Government, would not be received as a lawful defence before any tribunal in the United States; and that proof of it would be utterly unavailing. If such a defence were set up to any of the charges which may be made to arise out of the attack on St. Albans, a Judge in the United States would hold it insufficient in law, and would so charge the jury.

Mr. Devlin.—How do you know that?

Mr. Abbott.—By the report in my hand of the ruling of Judge Nelson of New York, in a similar case. On the trial for piracy of the officers and crew of the schooner Savannah,—a privateer cruising under a letter of marque from President Davis,—the same defence was set up as that under which these prisoners claim to justify their acts, and upon which alone they must rely to save them from conviction and execution as robbers. In charging the jury, as to the validity of that defence, Judge Nelson says:

"We have said that, in a state of war between two nations, the "commission to private armed vessels from either of the belligerents, affords a defence, according to the law of nations, in the "Courts of the enemy, against a charge of robbery or piracy on "the high seas, of which they might be guilty in the absence of "such authority; and under this principle it has been insisted, by "the learned Counsel for the prisoners, that the commission of the "Confederate States, by its President, Davis, to the master and "crew of the Savannah, which has been given in evidence, affords "such defence. In support of this position, it is claimed that the "Confederate States have thrown off the power and authority of "the general Government; have erected a new and independent "Government in its place, and have maintained it against the whole "military and naval power of the former; that it is a Government, "at least *de facto*, and entitled to the rights and privileges that "belong to a sovereign and independent nation. * * * But the "Court do not deem it *pertinent or material*, to enter into this "wide field of inquiry. This branch of the defence involves *consi-* "*derations that do not belong to the Courts of this country.* It "involves the determination of great public, political questions, "which belong to departments of our Government that have charge "of our foreign relations—the legislative and executive depart- "ments; and, when decided by them, the Court follows the deci- "sion; and, *until these departments have recognized the new* "*Government, the Courts of the nation cannot.* Until this recogni- "tion of the new Government, the Courts are obliged to regard "the ancient state of things as remaining unchanged. * * * And "if this is the rule of the Federal Courts, in the case of a revolt "and erection of a new Government, as it respects foreign nations, "*much more is the rule applicable* when the question arises in re- "spect to a revolt and the erection of *a new Government, within the* "*limits, and against the authority, of the Government under which* "*we are engaged in administering the laws.* And, in this con- "nection, it is proper to say that, as the Confederate States must "first be recognized by the political departments of the mother "Government, in order to be recognized by the Courts of the "country; namely, the legislative and executive departments, we

" must look to the acts of these departments as evidence of the fact. " The act is the act of the nation through her constitutional public " authorities."

And when the good feelings of the jury, revolting at this, perhaps strictly legal, doctrine, led them to seek further instruction as to whether, if they believed the accused were acting in good faith as belligerents, they might not take that fact into consideration—they were told that they could not.

I think my learned friend will admit that this shews that I have not spoken without authority—when I stated the kind of law that would be administered to these men; and in thus pointing it out I do not mean to assert that Judge Nelson's law was bad law, from his point of view. He has the reputation of being a learned, high minded, and upright Judge—and very probably was perfectly right in law in declaring himself unable to allow any weight to a plea of belligerency, until his Government should have recognized the state of war. But all this only the more forcibly impresses upon us the frightful mockery, the ghastly irony of the proffers of a fair trial to these prisoners. The trial will be fair and lawful according to the law of the Federal States:—but that law ignores the defence which those who promise a " fair trial " know is the only one to be set up. And while they talk of the " fair trial " of that issue, they know that it has been long ago decided against the prisoners; and never can be even presented for such trial. They tell the prisoners that it is " illogical and absurd " of them, to object to go over to the Federal States to have their defence of belligerency tried—though they know, not only that that defence cannot be tried there at all—but that it is the only country in the world where it would *not* be a full and complete defence to the charge of robbery. My learned friend blandly remonstrates with the prisoners for their unreasonable conduct, in not at once submitting themselves to the impartial and paternal tribunals of the United States—when in fact those are the only tribunals in the world which would entirely disregard—as an absolute nullity in law,—the only defence they possess! I venture to say that epithets much more severe than those my learned friend has used, are justly due either to him, or to our paternal Government whose mouthpiece he is—for placing before your Honor, and before this country, an argument at once so false, so treacherous, and so inhuman.

But even if it were possible to get such a decision as to the law, as would admit evidence for the prisoners, how are the witnesses to be got before the Court? Will escaped prisoner Adjutant General Withers venture himself in the hands of the Federals? Will Mr. Stone and Mr. Bettesworth go to St. Albans to tell their Chicago experiences? Will Mr. Cleary place himself in a New England

witness box, for examination as to the secrets of the department of State in Richmond? Really, the more I examine this notion of a fair trial for these men in the Northern States, the more hollow and repulsive it appears.

I fear, may it please your Honor, that the very great importance I attach to this case, not solely in the interest of the prisoners, but also as involving important national considerations, has led me into a more lengthy discussion of it than was required either by its intrinsic difficulty, or for the full development of our pretensions. My object has been, as I stated in the first instance, to seek to discover from the evidence of record the whole of the facts as they really occurred; and then, leaving the propositions of law on which we relied in the first instance, to rest on the arguments and authorities of my learned and able colleagues, to follow the Counsel on the other side through their arguments in reply to those propositions. That this duty has been long and arduous, necessarily follows from the fact, that during the greater part of three days, the ingenuity and research of four of the leading Counsel at this bar, have been employed in heaping argument upon argument, and authority upon authority, in support of the application for extradition, and in opposition to the pretensions of the defence. And so arduous has it been, that with the most sincere conviction that we are right, and the most earnest endeavor to show that that conviction is justified, I am not satisfied that I have not fallen far short of what I should have said in support of it. But before I leave the case in your Honor's hands, and even at this late hour, I must entreat your attention to some considerations which may well incline you to the side of mercy, if the balance of justice be in any respect doubtful.

The view I desire to submit is one allied to, yet different from, the merely legal and technical arguments which may be used with regard to this case. I contend that we have a right to look at the spirit of the Treaty, and of the statutory enactments based upon it, —and that we cannot forget, and have no right to overlook, the changes which war has produced in the States with which we made that Treaty, and in our relations with that State. "War," says Dr. Phillimore, "effects a change in the mutual relations of all "States; more immediately and directly in the relations of the "belligerents and their allies; but mediately and indirectly in the "relations of States which take no part in the contest." And what enormous and radical changes have thus been effected since the passage of the Ashburton Treaty! When that Treaty was passed, we and they were in a state of perfect peace. No prospect was farther from that great, prosperous, and happy country, than the hatred, the bloodshed, the military tyranny, the ruin and the desolation, that have spread themselves over its fairest portions.

Peace then presented her most smiling aspect, and no cloud foreshadowed her departure. Now, a war rages throughout the length and breadth of the land—a gigantic and sanguinary struggle, in which brother is arrayed against brother, and father against son. And it is a strife exhibiting war in its most repulsive features; war characterized by the most insatiable rapacity—the most unbounded devastation—the most lavish pouring out of treasure and of blood, that the earth has witnessed for ages. War is always a frightful calamity, civil war peculiarly so; but history gives no account of any war in which such bitter hatred, such intense hostility, have been developed. And not only men, who have risked and taken life, whose passions are inflamed, and whose thirst of blood is awakened—but those who usually soften the asperities, even of ordinary life, now join in the general cry for confiscation and destruction. Reverend divines, young and refined females, vie with each other in the fiercest and most demoniacal demands for ravage and extermination.

Now the Treaty was made to promote the transmission for trial from one part of this continent to another, of persons who had committed crimes of the darker class, respecting the character of which North and South agreed with ourselves; crimes which Vermont and Georgia alike prohibited, and which it was impossible alike for them, and for any other civilized State or people, to approve of, or even to tolerate. There was no intention on the part of the United States, when the Treaty was passed, to stipulate for the extradition for trial as criminals in Vermont, of persons who were regarded in Georgia as daring and devoted patriots; and for acts which Georgians held to be praiseworthy, if not heroic. The Northern and Southern States were alike parties to that treaty through their general Government; they agreed to reciprocal extradition for the same offences;—and the offences that so formed the subject matter of their and our agreement, were offences which they and we united in regarding with abhorrence, and as deserving of extraordinary exertions for their punishment, in the interest of our respective communities. Now, what is the position of these men, and the light in which their acts are regarded by the parties to that treaty? The Northern States demand them as robbers. They press this demand with unparalleled vehemence; and so violent and unmeasured are they in their wrath, that their Legislature, their press, and even their pulpits, resound with the opprobrious epithets which are heaped upon the prisoners. The Southern States, on the other hand, deliberately authorized and directed the acts thus denounced. They regard those who participated in them as gallant and devoted men, who risked their lives for their country. Their highest executive officers join in hurrying

off the papers and documents which are to aid in their defence. No pains, no labor, no risk, no money, are spared in contributing to their aid and comfort, in the critical position in which they now stand. In one word, one section of the nation with which we made the Ashburton Treaty denounces them as robbers, while the other extols them as patriots. Twenty millions of men under an organized Government, demand them as felons; but ten millions, under another organized government, existing *de facto*, claim them as meritorious soldiers. And it was with these thirty millions of men, then constituting but one community, that we made our Treaty. Surely if there be all these internal differences of opinion between the parties contracting with us, it is right that we should carefully consider what we are about to do. It is no longer the felon sinning against the law of nature, and against society in general; respecting the enormity of whose crime no one doubts; whom we are asked to deliver over for trial. It is the soldier of one of these sections, the enemy of the other; respecting whose criminality there is as wide a difference and as fierce a dispute as exists on any other question debated between these warring parties: *this* is the man whom we are called to deliver over to one portion of the nation, against the will of the other, under a treaty we made with both when united!

These seem to me to be subjects for your Honor's grave consideration. They are suggestive of much more that might be said, and much more forcibly said, upon the anomalous state of things in which your Honor is now called upon to act. But the considerations which arise out of them, personal to the prisoners, are among the most startling. These men are demanded for trial. For trial by whom, and how? Is it for such a trial as it would be presumed an ordinary criminal would have in ordinary times—when justice is administered in the United States by Judges second to none in learning and impartiality;—by juries composed of educated and independent men; and when the rules by which they are guided, are the humane and just principles upon which their and our criminal laws are alike based? Your Honor knows, every one knows, that no such trial awaits these prisoners. It is before Judges like Judge Nelson; who must declare their defence inadmissible in law; who must decide that the sovereign State of which they acknowledge themselves the subjects, is not entitled to their allegiance; that the President who exercises the civil power of that State, and the general who commands its armies, are felons like themselves; that the commission under which their officers, from the highest to the lowest have fought, and have won the admiration of the world, are mere unauthorised licenses to rob and plunder—which can serve no purpose but to prove more con-

clusively, their liability to a death on the gallows: it is before Judges who rule thus, that their trial must be had. And before what country will they seek their deliverance? It is from amongst the men whose daily literature is the New York Herald—whose sabbath instruction is from the lips of the Rev. Henry Ward Beecher—whose evening relaxations are the lectures of Miss Anna Dickinson, that the jury which tries them is to be selected;—those who daily, hourly, read and hear with approbation, their greatest, best and bravest, denounced in the foulest and most opprobrious terms—are to judge of their actions;—those who echo the fervent aspirations of the apostles and messengers of Divine mercy and Divine justice here on earth, for the destruction of these men and their fellows here, and for their damnation hereafter, are to be the arbiters of their fate;—those who listen to and applaud a fragile girl, while she outrages her sex, her age, and humanity itself, by frantic exhortations to wholesale slaughter and universal devastation; will fill the roll, from which will be taken the twelve men on whose breath will hang the lives of these prisoners.—And the defence which they will be expected to investigate, to weigh, and on which they will have to render their verdict, will actually be the assertion by the prisoners of what such a Court and jury are bound by the law, and constrained by their education, their associations, even their religious teaching, to look upon as a sure passport to a deserved death; as the very head and front of their offending.

Is it to a tribunal thus composed that these men are to be entrusted? Is it from such Judges and such juries that these men are to receive a fair, calm and impartial trial? Is it before them that every circumstance is to receive a full, unbiassed, and dispassionate consideration; as it would do before your Honor presiding over a Court of this country: or as it would have done before Judge Nelson, before this unhappy strife commenced? I implore your Honor well and maturely to weigh these things. I cannot and will not believe it possible that such a cruel injustice will be done to these unfortunate men—as to permit of their delivery to their enemies, with the certainty of an ignominious and degrading death. I feel that my advocacy of their cause has been insufficient, though I have devoted to it my best energies; but I know that my deficiencies will be supplied by your Honor's full appreciation of the whole case. And in that confidence I leave it in your hands, certain that your Honor's decision will be such, as will be dictated by justice, tempered with mercy.

WEDNESDAY, 29th March, 1865.

Smith, J.—In this case, which is an application on behalf of the American Government for the extradition of Bennett H. Young and others, I am now about to pronounce my judgment; and in doing so will first briefly state the facts, as they appear to be proved in evidence before me. In presenting them generally, without entering at this moment into particulars, or into those special points in the evidence, which have relation to the particular objections that have been raised; I would state that on the 19th of October last, Bennett H. Young and his associates, being in the town of St. Albans, State of Vermont, rose upon the people; took possession of the banks; pillaged them; set fire or attempted to set fire to several buildings; took and held a number of the citizens as prisoners, during the occupation of the town; seized upon horses for themselves; and were, finally, fired upon and driven out of the town by the people; exchanging shots with them, to an extent which does not clearly appear by the evidence—after having been apparently in some degree in possession of the town for about half an hour. One man was shot in the street, but under what circumstances does not appear. On this occasion, a man named Breck came into the bank, upon his own business, and was seized upon, threatened with violence, and thereby was obliged to surrender the money he had in his possession. This is the act charged as robbery for which extradition is demanded. The applicants say, that their case rests on municipal law; they allege that Young and his associates have committed, according to the law of the State of Vermont, the crime of robbery; that this offence was committed within their jurisdiction, and is provided for by the Treaty; and that all that is required for the extradition of the accused is, to show reasonable proof that the act was one of robbery, which, they contend, they have done. In general terms, then, these are the grounds on which the applicants claim from the Government of this country, the surrender of these parties for trial. The minor details of the facts, as proved, having reference to particular points in the case, will be touched on when those particular points are discussed.

Now, on the other hand, the prisoners state, that the act of plundering the banks was not robbery; that it was devoid of those elements, which in law constitute that offence; that the *animus furandi* was wanting; and that the act charged was a mere incident of the attack on the town of St. Albans: that on the 19th October last, Bennett H. Young was an officer in the army of the so-called Confederate States, holding the rank of first Lieutenant, under an appointment made by Mr. Davis, of the 16th June last, as signified to Mr. Young by Mr. Seddon, the Secretary

of War; that the other prisoners were soldiers in that army, acting under his orders; and that in the attack on St. Albans, they assumed, and declared themselves, to be acting as such officer and soldiers on behalf of the Confederate States and by their orders; alleging that they were detailed for the purpose, as a measure of retaliation for the mode in which, they asserted, the war had been carried on by the United States in the South. That, in fact, the commission of the so-called raid was authorized by their Government, and that, therefore, it falls outside the category of cases provided for in the Treaty, so that they cannot be extradited for it, because it wants the essential elements characterizing the offence for which under the name of robbery extradition is promised. Now, the statement of these facts and pretensions, in a general way, makes it quite evident, that the questions of law, which arise on their examination are in reality few in number. On the one hand, there is the claim for extradition, in support of which the municipal law is invoked, on the ground that it recognizes the act as one of robbery. On the other, there is the pretension of the prisoners, who say, we are not amenable to municipal law; because though we committed an act which falls within the definition of this particular offence; we did so as belligerents, under circumstances which remove it from the purview of municipal law; and that require it to be judged by the rules of international law, and by the laws of war. That, in fact, the St. Albans raid was undertaken in obedience to the commands and orders of our Government; that the plunder of Breck was merely an incident to that raid; and that, therefore, it ceases to fall within municipal jurisdiction. To this the applicants say, in the first place, that the magistrate who examines into a case of this kind has no authority whatever to try such questions as those raised by the prisoners; and they take issue with them also upon all the allegations of fact involved in their defence, and upon their application under the provision of the Treaty.

There is no doubt whatever, if the case stood exactly as it is presented by the examination of the witnesses for the prosecution, that it would fall under the provisions of municipal law; for the facts proved by them, so far as they stand unexplained or uncontradicted by other facts, present a clear case for extradition. But contrary to this view of the law contended for on behalf of the appellants, I hold that I am bound to consider whether the prisoners are really robbers; or, as they contend, soldiers and subjects of a belligerent, engaged in a hostile expedition against their enemy, under the authority and on behalf of their Government; and whether or no the act charged was a mere incident to that hostile expedition. And although I have no right to try this case, it is my duty to investigate it, so as

to ascertain whether or no the offence committed falls within the provisions of the Treaty, before I commit these men for extradition. Notwithstanding the pretension, therefore, that I have no authority, as committing magistrate, to receive evidence on these points; and that they are questions entirely for the consideration of a jury of the country where the offence was committed, I have admitted evidence not, technically speaking, for the defence; because there is no such thing as a trial before an examining magistrate; but evidence as a coroner might have admitted it, who must receive whatever is pointed out as being calculated to have a bearing on the enquiry in which he is engaged. On the first point, therefore, which presents itself, namely, whether on an application for extradition under the statute in that behalf, a judge can receive evidence tending fully to develop the facts respecting the offence charged, whether offered on the one side or the other, I entertain no doubt, and I consider that the affirmative is fully sustained by authority. The case of the Gerity, decided by the Chief Justice and a full bench of Judges in England, has been brought forward to shew that the contrary view is the correct one. It has been stated that Chief Justice Cockburn declared, that testimony tending to remove the imputation of crime from the prisoners, was for the jury alone. I do not view his dictum in that light; on the contrary, I think his language demonstrates, beyond the shadow of a doubt, that his opinion was the other way. What he really did hold was, that where there were mere presumptions of a fact, but no positive evidence of that fact, it was the duty of the Judge to commit the parties for trial; and to leave the value of those presumptions to be estimated by a jury. This is really the doctrine declared in the judgment of the Chief Justice, and concurred in by his associates. But is it to be inferred from this, that if proof had been offered of the fact, which then rested only on a presumption—and a very feeble one—that such proof would have been referred to a jury? I think the reverse is the correct inference from the language of the Chief Justice. The whole of the judges inferentially admit that if those men had produced a commission from Jefferson Davis, they would have acknowledged it as sufficient to establish their belligerent character. Can it be stated that anything appears in that case to show, that if Ternan and his associates had presented a commission to the Judges, they would have refused to receive it, and to give it its full effect, while they admitted its sufficiency as a justification? There is no such opinion to be drawn from the report; nor, in fact, could such an opinion be held by this Bench. In fact, it is clear that they acknowledge, as regards those men, that the production of a commission would have justified their act under

the law of nations, and that thereby they would have been deprived of all jurisdiction over them. The argument of Mr. James, which was concurred in by the Chief Justice was, that the fact that persons acted on behalf of one of the belligerents, was recognized by the law of nations as a justification, and the possession of a commission is indicated as a circumstance in the presence of which they could never order the prisoners to be extradited. They were finally discharged on another point, though held liable to be committed upon this one; but that did not affect the position all the Judges took upon the question now under consideration; and it is impossible to deny the logical correctness of their views. How absurd it would be to say, that if the commission existed and were acted upon on the occasion complained of, there would be no crime under the law of nations, and therefore no authority whatever to commit; and at the same time to affirm that under our own law the commission could not be looked at at all. A proposition of this kind, if attempted to be urged before that eminent tribunal, would never in my humble judgment have received their sanction, for it wonld involve a total disregard of the law of nations; and would permit of the violation of the implied restriction of the Treaty stipulations to certain crimes, by allowing it to operate in all cases which could colorably be brought within its provisions. And to refer such a point to a jury, would be in effect to hold that the Courts of the party demanding the extradition, would be the only tribunal competent to decide whether the proof offered in support of that demand was sufficient or not. Sir George Cornewell Lewis says, at p. 55: "The assumption upon which a Treaty of extradition rests is, that a civilized system of criminal law is executed with fairness, and that the cases claimed for surrender are those of offenders really suspected of the crimes with which they are charged. If a dishonest and colourable use were made of such a Treaty; if, for example, a political refugee were charged with one of the enumerated offences, for the purpose of bringing him within the power of his government, and if when he had been delivered up he was punished for a political crime, it is clear that a system of 'extradition could not be maintained with a government which 'so perverted the treaty.' Now, who is to determine whether the demand is founded on the pretence here set forth, is it the magistrate before whom the examination takes place, or is it to be decided when the person is extradited by the government itself which asked for the extradition?' I think this requires no answer. I fully agree with the remark of Mr. Justice Crompton in the Gerity case. He says: "It is said that we must trust to the discretion of "the other State, that it will not demand extradition in cases where "it is unreasonable to do so. But that is very dangerous doctrine,

" to which I cannot subscribe ; and I think it is far more wise to " construe the act, which is peremptory in its terms, in such a " way, if we can, as to exclude cases in which the demand would be " unreasonable." (Law Reporter, p. 511.)

Chief Justice Cockburn said—" As to the other question, whether supposing piracy *jure gentium* to be within this act, there was sufficient *primâ facie* evidence of it, I agree in every thing Mr. James said, as to acts done with the intention of acting on behalf of one of the belligerent parties ; and I concur in thinking that persons so acting, though not subjects of a belligerent state, and though they may be violating the laws of their own country, (e. g. the laws of neutrality), and may even be subject to be dealt with, by the state against whom they thus act, with a rigor which happily is unknown, among civilized nations in modern warfare ; yet, if the acts were not done with a piratical intent, but with an honest intention to assist one of the belligerents, such persons cannot be treated as pirates. But then, it is not because they *assume* the character of belligerents, that they can thereby protect themselves from the consequences of acts really piratical. Now, here, it is true that the prisoners at the time said they were acting on behalf of the Confederates, and that, we are told, is in fact equivalent to hoisting the Confederate flag. But then, pirates sometimes hoist the flag of a nation in order to conceal their real character. No doubt *primâ facie* the act of seizing the vessel, saying at the same time that it is seized for the Confederates, may raise a presumption of such an intention, but then all the circumstances must be looked at to see if the act was really done piratically, which would be for a jury." That is, as I read the judgment, the mere presumption of facts which alone existed in that cause. But if a commission had been produced, it would no longer have been a presumption, but a fact, and as in the case of the Roanoke at Bermuda, would no doubt have been considered sufficient.

It is because the Chief Justice says that in his opinion this is a question for a jury, that the whole of the fallacious argument has been used, that all cases of the same nature should go to a jury ; when in fact what was meant was, that as the case for the defence rested on a mere presumption, and not on positive evidence ; such as a commission ; therefore it was proper to send it to a jury. In fact, when the Judges heard that the act was declared to have been done in the interest of the Confederate Government, the Chief Justice treated that declaration, naked and unsupported as it was, as raising a question deserving of grave consideration.

Supposing, therefore, that the proof was conclusive that these men acted under the authority of their Government, what effect would that fact have, upon the charge that they have offended

against the municipal law of the other belligerent? Before discusing this question of law, however, it may be well to examine into the nature of the facts proved in this connection, and to see how far they have established the allegations upon which this part of the prisoners' case rests.

There has been a considerable amount of evidence adduced in this cause bearing upon the position of the prisoners as Confederates, and in support of their assertions that they belonged to the Confederate army. This evidence is both documentary and parol, and appears to my mind conclusive. Without entering in detail upon the objections taken to a part of it, which appear to me to rest upon insufficient grounds, and not to bear in any respect the test even of a superficial examination, I hold that it is proved by that evidence, that on the 19th October last Bennett H. Young was an officer of the army of the so-called Confederate States as First Lieutenant, under commission from Mr. Davis of 16th June, 1864; that Young received written instructions from Mr. Seddon, Secretary of War of the Confederate States, authorizing him to organize in the territory of the enemy, for special service, a company of twenty soldiers then beyond the lines; to proceed to the British Provinces to report to Messrs. Thompson and Clay, Confederate agents here, or to Mr. Clay alone; to execute such enterprises as should be entrusted to him; to violate no local law, and to obey implicitly their instructions; that large numbers of Confederates collected at Chicago in August last to relieve the prisoners at Camp Douglas; that the St. Albans expedition was organized there by Young from among the Confederates, under his instructions from his Government, which he exhibited then, and as a commissioned officer; that he then reported his doings to Mr. C. C. Clay, who gave him a memorandum approving them, and also approving and authorising the expedition against St. Albans; that the other prisoners were soldiers in the Confederate army, acting under Young's orders, and that in the attack on the town he and his party assumed, and declared themselves to be, acting as sub-officer and soldiers, on behalf of the Confederate States, alleging that they were detailed for the purpose, to retaliation for similar acts committed by the Federals in the Southern States;—these facts I consider and hold to be established beyond controversy by the evidence of record. Very slight attempts were made by the Counsel for the applicants to assail either the letter of appointment or commission, or the instructions given, and I am of opinion that there was no ground for their objections.

The consideration of the law applicable to this state of facts, involves an enquiry into the nature and interpretation of the national contract, as between England and the United States, contained in

the Treaty, and as expounded by international law,—and it will be instructive in this connection to examine a case of a nature not very dissimilar in principle, perhaps, to the one now before us, which engaged the attention of the two nations between whom was made this Treaty of Extradition. The case I refer to is that of the *Caroline*. That case, as properly understood, is one that settles, beyond all dispute, the question of governmental responsibility as distinguished from individual responsibility. The circumstances under which the United States territory was then invaded, the subsequent arrest of McLeod, his detention for trial for the crime of murder, and the ustification of that detention by Judge Cowen, gave rise to a long controversy. Judge Cowen held, that because England and the United States were at peace, the act of McLeod was incapable of being justified by any principles of international law, and that therefore the adoption and assumption of the act by Great Britain—which was certainly no more than equivalent to the previous authorization of the act by Great Britain, could not relieve McLeod from his responsibility to the ordinary municipal law of the state where the offence had been committed. Other Judges of the American courts, however, refused to concur in the opinion of Judge Cowen. His observations and judgment were reviewed by Judge Talmadge, who showed, beyond the possibility of dispute, that the views of Judge Cowen were altogether erroneous and unsustained by the principles of international law; and they have been negatived by every jurist of eminence in the United States. But not only was that case examined closely by these great Judges, but it was observed and commented on by great statesmen; and the principles contended for by Judge Talmadge have been adopted and recognized universally; so much so, as to be taught in the schools as indisputable rules of international law. If any doubt could be thrown on the principle contended for in that case by the British Government, how was it that none of these Judges, nor even the astute and logical mind of Webster himself, could suggest one? Mr. Webster raised every point which the ingenuity of man could suggest, but Mr. Fox would never allow him to escape from this position; "the moment the act was assumed by the Government you ceased to have any right to examine into it at all, upon a charge against the individual. It is taken out of the jurisdiction of the criminal courts." This was the position taken by Mr. Fox, and he demanded the immediate surrender of McLeod, then held for trial for murder in the State of New York. Tthe case was an extreme one, as it was alleged that the killing of Durfee took place on American soil after the *Caroline* had been seized, and was not an incident, or rather was not a necessary incident, to the capture of the vessel.

The Grand Jury found an indictment against McLeod, and he

was placed on his trial for committing murder. Now, if this wery an act which would have fallen within the purview of ordinare criminal jurisprudence, surely Mr. Webster would have said—the act this man did is one for which he must be made amenable to the ordinary tribunals of the country, and he must be tried in the usual form. Surely if this proposition could have been asserted in any case, this was one in which it could plausibly have been suggested. But he did not attempt anything of the kind; for he admitted the principle that the moment the act was established to be the act of the Government, the individual committing it ceased to be individually responsible, and thereby ceased to be amenable to the ordinary courts, and could not properly be tried before them. But, contrary to the opinions of Judge Talmadge, of Mr. Webster, and of many other Judges and jurisconsults before and since, Judge Cowen denied this doctrine; and as no statutory law then existed covering such cases, McLeod was tried before the State Court for murder, in defiance of the opinions of the statesmen representing the general Government. This difficulty was overcome by subsequent legislation, but in the meantime the trial proceeded—and the acquittal of McLeod prevented difficulties between the two Governments which might otherwise have assumed grave proportions. The principal point in the McLeod case, therefore, is the recognition of the important principle, that the moment an act becomes a national act, all private jurisdiction over it as regards individual responsibility, ceases. This ground must be kept in view in a case like the one now before us; for without a clear understanding of it, nations would confound international law and municipal law in an inextricable manner. It would involve an absurdity, to say that there can be two such jurisdictions of an opposite nature over the same offence, as the general law of nations and the municipal or local law of individual nations. It stands as a self-evident proposition that there cannot be, in the nature of things, two such concurrent jurisdictions over the same act. The offense must be cognizable by the law of nations or by the municipal law; it cannot be cognizable by both.

And this rule cannot be evaded by selecting from an act referable for its approval or censure only to the law of nations, a portion of, or an incident in, such act; and then attempting to subject such portion, or such incident, to trial by a municipal tribunal. The whole of the details and incidents which, in the aggregate, constitute a national, or hostile act, must be taken together. It is the hostile act or operation which I must look at, and not each minute detail of that act. To permit any departure from this rule would involve the gravest consequences: as for instance that a general officer taking refuge in neutral territory after an unsuccessful battle, could be held respon-

sible for every individual act committed as incidents to the fight, either before or after it, and could be demanded and surrendered for trial for such act to the criminal tribunals of the country against which he was making war. If therefore the attack upon St. Albans was an hostile attack, made by parties acting in behalf of the Confederate Government—and expressly or impliedly authorized by that Government, I must look at the attack itself as the act which I am to consider. I must look at the numerous instances which occurred during its continuance as the elements which in the aggregate constitute the act done by Young and his party—as the firing of all the shots in an action taken together, constitute such action. And I can no more treat the plunder of Breck, as being entirely distinct and separate from the other *res gestæ*, than, if the matter came before me, I could regard the burning of any particular house in the Shenandoah Valley by any individual in the Fedral army, as an isolated act of arson.

That acts cognizable by the law of nations are necessarily free from liability to investigation, or rather to punishment, by the ordinary courts, is therefore an important point, admitted by Webster himself, and sustained by the numerous authorities on this point that have been cited from the bar. This opinion was followed in the case of the *Roanoke*. When the captors were taken up as pirates on that occasion, they produced a commission from Jefferson Davis as the authority under which they were acting. Did the Court stop to question it? No; the Judge stopped the examination, or rather the Attorney-General did so. He said—this act was committed by one who produces the authority of his sovereign as his justification. His case therefore is no longer one which can be proceeded with as a robbery for which he is amenable individually to the ordinary courts; and the prisoners were thereupon immediately discharged. And Earl Russell, in his despatch on the subject entirely sustains the action of the court —and holds that the reason given for the discharge was sufficient.

I am aware that it has been forcibly urged for the applicants, that the offence charged is of such a nature, that it does not fall within the law of nations, not being of such a character as is justified or permissible under the laws of war; but when I come to the consideration of their pretensions in this behalf, I shall examine the law in reference to them, and see if there be anything that takes this matter out of the law of nations; and if there be not, these prisoners have a right to invoke the benefit of that law. In support of the general proposition I have laid down that if the act complained of be authorised by the Confederate States, individuals concerned in it ought not and cannot, be held personally responsible in the ordinary tribunals of law for their participation in it, I

will cite merely a few authorities: for were I to go over all those applicable to the point it would take me days, not hours, to deliver my decision. I refer to Halleck, pp. 304, 5, 6; 1 Opinions of Attorneys General p. 81; Talmadge's Review, 26, Wendell, p. 663; Carrington, et al. vs. C. Ins. Co., 8, Peters, p. 522, and Vattel, Rutherford, and Burlamaqui, who are referred to by General Halleck sustain, the same view.

And it has been held by Kent, by Chief Justices Spencer and Gibson, and by Professor Greenleaf. In fact there can be no doubt entertained on the subject, for no municipal tribunal in any nation in the world could be found to dispute it. To show how far the principle is carried in England, I will refer to a case which has been decided there, turning on this point before the Prize Court in England, and adjudicated upon by one of the greatest judicial minds England ever possessed,—Lord Stowell. In 1801 a case came up in which the title to a ship was called in question, as having been derived from an Algerine capture, on the ground that the Algerines were mere corsairs sending out their ships to prey upon the commerce of the whole world, and as enemies of the whole world, were mere pirates from whom no title to a captured vessel could be acquired. But the contrary ground was taken by the court, and it was decided that the African States being an established Government, and it being a recognised rule of action of that government to prey upon maritime commerce though their notions of justice differed from those of the rest of mankind, still the title from the Algerines to the captured vessel was good. And it must be remembered that this decision was rendered against a British subject, and a British owner (4 Rob. p. 3, Case of the Helena). So it seems to be conceded, that a nation notoriously at variance with all the nations of the world, refusing to admit the principles which govern civilized nations, but preying on the commerce of all; could nevertheless secure a good title for the purchaser of their capture by a confiscation in their way. And in discussing this decision, Judge Talmadge states that "the same principle of immunity applies to hostilities upon the land and upon the sea." In the debate in the House of Lords on the 16th May, 1861, Lords Derby, Brougham, Chelmsford, Kingsdown, and the Lord Chancellor all laid down in forcible language the same principle.

"If then the act of these men is a hostile act done on behalf of one of the belligerents, and therefore a public act in the sense in which that phrase is used by the learned writers just cited, the State Courts would be unable to treat it as an offence against their laws—and would violate their laws if they attempted to do so; just as I would be violating the law of my own country if I took up the matter as a matter cognizable by those courts—which I must do if I commit the prisoners.

Now a government that exists for the time being, even by usurpation, is a government *de facto*, and is entitled by the law of nations to the right to make war, and to the other privileges of a belligerent. Whether the Southern Confederacy is recognized as a sovereign power or not, it has the character of a belligerent; it has the right to raise troops and to do everything in time of war that an independent government in that behalf can do. If it violates the law of nations, reprisals and retaliation may be visited on it. If it does anything wrong it is liable to be visited with punishment as the law of nations and laws of war direct.

By these laws no other appeal exists than to the sword, beyond the moral effect which the opinion of other civilized nations may be supposed to exercise upon every community. The doctrine is forcibly laid down in one of the valuable notes to the translation of Mr. Vattel's work at page 391. "As nations (says the annotator) are independent of each other, and acknowledge no common superior, there is, unfortunately, no sovereign power among nations to uphold or enforce international law; no tribunal to which the oppressed can appeal as of right against the oppressor, and consequently, if either nation refuse to give effect to the established principles of international law, the only redress is by resorting to arms, and enforcing the performance of the national obligation. See upon this point also Halleck, p. 73. 2 Azuni, p. 64. Wheaton, pp. 18, 21.

I am undoubtedly bound to apply the principles of the law of antions to the relation between the contending parties in this war—and I hold myself so bound, not only by the proclamation of neutrality, but also by the clear principles of the laws of nations themselves. I am of opinion that the civil war now existing between the Northern and Southern States, constitutes a state of perfect war: that the Government has recognised it: and that the parties are belligerents, and are entitled to all the rights of belligerents, and to carry on the war, *quoad* the other belligerent, as they think fit. That no neutral could adjudicate, between the belligerents, as to their manner of making war. And that the authority, express or implied, of one of the belligerents to do any hostile act as against the other in any part of the territories of the belligerents, takes such act out of the range of municipal law, and removes any responsibility to that law from the individual committing it. I will therefore now leave this branch of the subject, and proceed to another point, in which I will assume that the laws of war justified the issue of such a commission from Mr. Davis as the one which Bennett H. Young had received, and that I am bound to recognize that commission as a document which I may treat as legal

evidence in this case. And this point is one upon which the applicants have dwelt, as being most important to the due decision of this case.

It has been contended by the counsel, that this is not an act of war *per se*, but if an act of war at all, is only so constructively. I do not understand this distinction. No author with whom I am acquainted has ever made it: and it has never, to my knowledge, been urged in a court of justice.

Acts of war by the law of nations, are just such acts as the belligerents choose to commit within the territories of each other.—These acts are done upon the responsibility of the nation, and the soldiers committing them can in no way be held punishable for them. They may be what is termed unlawful acts of war, and violations of the law of nations, but I, as a judge in a neutral country, cannot sit in judgment upon them. Being committed within the territory of the belligerent, there is no violation of our law: nor can the belligerent invoke their unlawfulness before me. By the international code, reciprocity is acknowledged by all authors to be one of the obligations of belligerents, and one of the tests of the lawfulness of their acts as against each other. Whatever then, is done by one nation to the other, within belligerent territory in carrying on the war, must necessarily be permitted to the other. As a matter of fact, raids of this description have been constantly permitted and justified by and on behalf of the United States? On what principle then can they be denied to the so-called Confederate States. However, as far as regards the violence or unlawfulness of these acts, as a neutral I have no authority to decide. It is for the belligerents themselves to deal with these questions; and where authority, either express or implied, is given by one belligerent to do the act, it is an act of war for which alone the belligerent is responsible. These doctrines do not apply, and never could be intended to apply, to crimes possessing no characteristic of hostility, committed by order of a sovereign in time of peace and without just cause. There is no analogy between the cases cited by the counsel, such as the treacherous assassination of an individual by a hired murderer, and cases of the description now before me. They rest upon entirely different grounds. The general and abstract rule undoubtedly is, that every subject of one belligerent is the enemy of every subject of the other, and that one belligerent may lawfully kill his enemy or seize upon his property wherever he finds him or it, except in neutral territory. Happily for the world, of which so large a portion is constantly engaged in war, civilized nations in modern times have voluntarily imposed upon themselves rules for their guidance in war, the breach of which exposes the nation which infringes them, to the censure and

reprobation of other civilized nations, and to reprisals and retaliation by the belligerent in respect of which the breach has occurred. These abstract or general principles, and the exceptions to them suggested by the modern rules of warfare, constitute the propositions established by the authorities cited at the bar on both sides. For the applicants, numerous authorities have been quoted to shew that the pillage of private citizens, and the killing of unarmed ones, are prohibited by these modern usages. For the defence, the general rules have been cited which recognise the abstract right of every belligerent to kill or plunder his enemy. That pillaging a hostile town—which necessarily involves the pillage of the citizens of that town, is an act in its nature hostile, and which has probably been done in every war that has occurred since the world began, cannot be denied—nor that it is within the abstract rights of a belligerent. It is probably equally susceptible of proof that this species of warfare is not alluded to. And I may be personally of opinion that the infringements of these modern usages involved in this expedition—and if we may credit the public prints, not unusual on either side in this unhappy strife—are cruel and barbarous and disgraceful to the great nation between whose sections they have occurred. But what is the consequence? Can I say that I do not consider the pillage and burning of St. Albans such acts as are approved of by the modern usages of war, and therefore, although undoubtedly within the rights of war, that I will treat the prisoners as ordinary felons, and deny them altogether a hostile character? Such a proposition is too monstrous to suffer me to entertain it for a moment.

A very few authorities will establish the correctness of these views. See Wheaton, pp. 518, 519, 586 *et* seq., 626. 3 Phillimore, 115, 116, 137. 2 Grotius, (trans.) p. 65. 2 Wildman, 8, 10, 24. Vattel, 399. And the distinction is actually clearly laid down in many of the passages cited for the applicants. For instance, Vattel, p. 351, being cited; see p. 352, making the distinction. See also the distinction taken at p. 360, from the doctrine laid down at p. 359. In p. 359 the distinction is taken in the sentence adjoining the one cited.

As regards any violation of the law of nations, it is laid down that if persons engaged in war, but offending against its laws, are captured by their enemy, they may be dealt with as such enemy may think proper. If taken within its territories, they may be hanged or shot after a military trial of the most summary description. But it must be remembered that it is when captured within the enemy's territory, and only then, that these persons are liable to be punished in this manner. But it is pretended that if such persons are not captured; that if they escape from the enemy and seek an

asylum in neutral territory, it follows that under such an extradition treaty as ours the neutral power should give them up.

Mr. Bethune.—Cannot they be surrendered ?

Judge Smith.—I venture to say there is nothing to that effect in the books—nothing that even distantly alludes to the possibility of surrender, because of the violation of the laws of war. The Treaty between the two governments provides that for the violation of the criminal law, parties shall be surrendered; but for violation of national law, as between belligerent powers, it does not give that right: for it would be to declare that because an act by the law of nations was a violation of the rules of war, therefore a private tribunal should consider itself competent to try the case as a violation of municipal law.

There is no law, no authority, no precedent, no work of any description, which declares, that because a hostile act may be unlawful in one belligerent as violating the rules of war, the neutral is bound to give him up to the other. I lay stress upon this point, because it is one on which there is great difference of opinion among the counsel at the bar. An obvious illustration of the true distinction was put at the bar. All the authors declare that it is unlawful to shoot a prisoner, after he is surrendered. But would a person acting unlawfully in this respect be liable to extradition as an ordinary felon ?

From the commencement of the seventeenth century, when the principles of international law began to awaken attention, down to the present time, there is no authority that does not recognise the distinction now under discussion. But here I dismiss this branch of the case.

If, then, the Confederate States had the undoubted right to appoint officers and soldiers, and if we are undoubtedly obliged to recognize that right, then the view I entertain of the evidence indicates the mode in which I regard the position of Lieut. Young, before me; as I have just stated, I consider it proved that Young was so appointed, and that the other prisoners were soldiers of those States, forming, with the remaining persons who joined in the attack on St. Albans, a party organized for the purpose of a hostile expedition against that town, under the authority of their Government.

The authority of the party for the expedition seems to me to be sufficiently established by the evidence. It is truly said by writers on this subject, that such authority may be express or implied, (Wheaton pp. 626-7), and in this case both kinds of authority appear to have existed. There is direct authority, from the effect of the instructions given to Young by Mr. Seddon, and by Mr. Clay, to whom he was refered by Mr. Seddon; and there is implied authority from the possession of military rank in the service

of the Confederate States. As to the direct authority received by Young, it is unnecessary to quote books; it is a mere matter of testimony except in respect of the effect of the alleged breach of neutrality, which I shall have occasion presently to discuss. But as the authority given by Mr. Clay has been stated to be an absolute nullity because given here, I may say a word respecting it, in passing. I do not hold that the approbation or authority of Mr. Clay was essential to bring the acts of the prisoners at St. Albans within the impunity afforded them by international law; but as Counsel have laid much stress upon this point, I will state my views upon it. I find no rule or principle of law which stamps this act of Mr. Clay with absolute nullity: as between the belligerents. Nor do I find his position as a diplomatic agent in a neutral country, at all unusual. We have the well known instance of Mr. Mason in England, and Mr. Slidell in France. They have not been recognized as ambassadors because the independence of the South has not been recognized by those governments; but if they have not those powers, they have rights as agents of a belligerent.

The concession of this position does not admit that they hold the position of ambassadors nor that the government of those countries have recognized them as accredited envoys. But in fact Mr. Slidell and Mr. Mason have held correspondence with the acknowledged officers of the English and French governments—they have exercised certain powers though they have not been received as ambassadors of a recognized power. Earl Russell has corresponded with Mr. Mason as the agent of his government; and Mr. Slidell has had interviews with Mr. Drouyn de L'Huys in the same quality. And we know also that Commodore Barron directed the cruise of the Florida which terminated in the bay of Bahia. And there are numerous instances in which the United States government have sent agents to other countries under similar circumstances.

As to the implied authority derived from the Commission, I will refer to two or three books, to which numbers of others, of the same tenor, might be superadded. Mr. Lawrence says (Wheaton, p. 248:—"But in the case of one having a commission from a "party to a recognized civil war, no irregularity as to acts done "*jure belli*, will make a pirate." Mr. Wheaton says—speaking of the abstract right of the subjects of the belligerent powers to assail each other—that: "the usage of nations has modified this "maxim, by legalizing such acts of hostility only as are committed "by those who are authorised by the express or implicit command "of the state. Such are the *regularly commissioned* naval and "military forces of the nation," p. 627. In the Chesapeake case,

Judge Ritchie only holds it to be necessary that, even neutrals engaging in acts of hostility should be "acting under the authority "of a commission which will bear the test of a strict legal scru- "tiny." "Belligerents," he says, "may make captures without "commission," but that neutrals can only protect themselves by commissions from, *or* acting under authority of the billigerent government. See on this point, opinions of Attorneys General, Vol. 1, p. 81, 26; 26 Wendell, p. 675, 1 Kent, pp. 94 and 96, Lord Russell to Lord Lyons, Wheaton, pp. 253-4. Halleck, p. 388. Debate in the House of Lords on the proclamation of neutrality.

If these propositions of law and fact are sustained by the authorities and by the evidence of record, as I believe they are, it follows necessarily that the attack on St. Albans by Young and his party must be regarded as a hostile expedition, undertaken and carried out under the authority of the so called Confederate States, under the command of one of their officers. And from the principles I have laid down, I must also hold that the acts of Young and his party on that expedition, while in their enemy's country, in so far as they have a hostile character, do not fall within ordinary criminal laws, but under international law and the rights of beligerents, and that the propriety of their acts in that capacity must be settled between the belligerents, and not by a neutral Judge. But I cannot leave this branch of the subject without examining an argument of the Counsel for the applicants, which is to this effect.

They say that the act which apparently violates the municipal law of Vermont, and which it is attempted to protect from the consequences of that violation, by invoking the immunity afforded to belligerents by the laws of war, is really deprived of its belligerent character, and consequently of that immunity, by the breach of the laws of neutrality, which they say the prisoners committed. That is the broad proposition of the prosecution. They say, you cannot enjoy the benefit of the law of nations in this instance; you cannot be considered as belligerents. Whatever characteristic of belligerency you may have had, you have ceased to possess it. You came here seeking an asylum, you placed yourselves under the protection of the laws of this country: you have violated those laws by violating our obligations as neutrals, and you have thereby ceased to be entitled to be regarded as belligerents. And this argument has been pushed so far as to assert that under the facts proved, the prisoners had acquired a domicile here, and had lost not only their character as lawful belligerents, but their national character. Here also much discussion may be rendered unnecessary by ascertaining what facts are proved in support of these pretensions of the applicants.

An examination of the evidence satisfies me that the real state of the case is: that during the autumn of 1863, Young escaped from the United States, where he had been held as a prisoner of war, and that he shortly afterwards reached Toronto, where he remained till the spring of 1864, during part of which time he appears to have attended lectures at the University. That he left Toronto in the spring, declaring his intention of going to Richmond; that he was in Halifax in May, with the same expressed intention; that he received his appointment and three letters of instructions, dated at Richmond, in June; that he returned to Toronto with his papers in July; that he was in Chicago with a large number of Confederate soldiers, in August; that he was at St. Catherines, in Canada, where Mr. Clay resided, in September; that he was in Montreal, about the beginning of October, at St. Johns, C. E., on the 11th of October, and at St. Albans, on the 19th of the same month. That Spurr, Huntley, and Teavis, were also seen in Canada; Spurr, in Toronto, in the winter of 1863–4, and Spurr, Teavis, and Hutchinson, at St. Johns, at the same time with Young, though leaving that place separately. And that they were at Chicago, in August last. While at Chicago the expedition against St. Albans appears to have been organised, and the party of Confederate soldiers raised according to Young's instructions. And while at St. Catherines, Young reported his doing to Mr. Clay, and obtained his sanction, both verbal and written, of the projected attack. While at Montreal, in October, he received from Mr. Clay $400 towards the expenses of the expedition.

Passing over, for the moment, the question, how far this state of facts constituted an offence against the laws in force for the preservation of our neutrality, (which seems to be doubtful but upon which it is unnecessary for me to give any opinion;) would or would not the violation of our neutrality take away the prisoners' characters as belligerents? This is the exact point raised in this connection by the applicants, and great stress has been laid upon it, and many authorities cited to shew, that the affirmative of this proposition is the law. It is urged that the prisoners committed the act complained of, after they had ceased to be citizens of the Confederate States, and after they had voluntarily resigned their belligerent character.

It is asserted that their residence in this country involved a change of domicile on their part; and that in fact Young took up his residence there, *animo manendi*. Therefore, it is said, they have violated the law which regulates persons domiciled in this country, because, by acquiring that domicile, they became citizens of this country, bound by its laws; and that, as a consequence, they cannot invoke the privileges of belligerents.

The first question that necessarily arises in the examination of this pretension of the applicants, is: what are the facts from the evidence? does it appear that the prisoners have acquired a domicile, or even have taken up their residence here? There is no doubt but that the evidence shows that, in 1863, Bennett Young did come to this country as a political refugee; that he resided in Toronto for some months, and that he attended Lectures at the University, and was again seen there in July or August. It is argued by the prosecution, that these circumstances constitute proof, so far, of an intention on his part to remain in Canada, that this involves, in the eye of the law, a change of domicile, which prevents his longer claiming the character of a belligerent soldier; and places him under the authority of the laws of this country, which forbid, in the most positive manner, the doing of any thing contrary to our obligations as neutrals.

That Bennett Young remained in Toronto for a time, under the protection of the laws of this country, may be taken as proved; but the presumption as to his *animus manendi*, passes good only so long as he remained. If a foreigner departs from a country, the *animus revertendi* is presumed, and the *animus manendi* necessarily disappears, as affecting the law of domicile. The existence of the *animus manendi* is presumed from the fact of continued residence in a country. But, as to Young, he left the Province in April or May, to go down to the Confederate States. The proof of this is in the record. In short, the fact of his being in Richmond, and receiving there a commission from the Confederate Government, appears to me to be clear.

(Some discussion here occurred as to the proof of the presence of Young in Richmond.)

Judge Smith.—The tenor of the whole of the facts leads to the conclusion that he went to Richmond, and there received his commission and instructions: and I shall assume, for the purpose of my argument, that this was the case. Does this voluntarily entering into the service of his country, as a Confederate soldier, not show the intention to retain his domicile of origin, and his national character? Now, the reception of the commission shows that he returned to the service of his country. So far as this question of domicile is concerned, the *animus manendi* cannot be considered as existing, but the *animus revertendi* is rather to be presumed. There can be no doubt therefore, that in point of fact, there was no acquisition by him of a domicile here, nor any loss of his national character. But so long as he remained here he was certainly bound by our laws as much as if he had been a British subject. Assuming however that there was a breach of neutrality connected in some way with the expedition against St. Albans,

would that breach of our neutrality take away from a hostile act committed in the enemy's territory, the immunity due to it ?

The Counsel for the prosecution answer this question in the affirmative. But I cannot find this pretention sustained by any authority ; certainly not by any of the numerous authorities they cited. The law of nations does not recognize such a principle. No judgment of any court that I am acquainted with has ever declared it. On the contrary, the true doctrine incontrovertibly is, that the violation of the neutrality of a nation, by a belligerent, has no effect or bearing whatever upon the belligerent character of the offender, in reference to acts done within the enemy's territory. That such violation is illegal no one denies, and in that respect the authorities cited for the applicants are unimpeachable. But those authorities have reference chiefly to the transfer of property by capture, and they properly hold that a maritime capture may be held void by reason of any breach of the law of neutrality which occurred in making it. But this objection to the validity of a maritime capture is a thing with which belligerents have nothing to do. If the Southern belligerent violates our neutral or municipal law, what has the United States Government to say to that ? Can they complain of the violation of our law ?

So far from that, all writers on international law hold that no violation of neutral territory can be considered at all, in the interest of either belligerent. It is the neutral alone who can complain. But examining for a moment the pretension as to the deprivation of the character of hostility by a breach of neutrality. Take the case of Gen. Lee coming here with 75,000 men, taking possession of one of the railroads in Canada, conveying his troops through the heart of our territory, and in retaliation for acts done in the South, making a raid on Vermont. Lee's authority to do this, would not be more extensive than Young's was ; and the act would be a greater breach of neutrality than Young's could have been.

Is it possible that Lee would be held to have lost his belligerent character and to be liable to be treated as a mere robber ? Or that he would be held to retain his belligerent character, merely because he perpetrated the breach of neutrality with more men than Young had, their acts being the same, and their authority derived from the same source. Surely he who commits a similar act, though with but 20 men, would be entitled to be judged by the same rule. A different decision would be manifestly wrong in principle. And if the doctrine be applied fairly, as we, as neutrals, are bound to apply it, what becomes of the hostile character of the thousands of Federal soldiers, who have passed through Western Canada. Are they all robbers because they have done so ? are the soldiers illegally enlisted here for the Fed-

eral armies robbers also? But assuming that there is a violation of neutral territory in this case, in its largest possible sense; that these men have gone through this country to St. Albans to make this raid, and that doing so, as well as receiving instructions from Mr. Clay, were in violation of the laws of neutrality. Let us see how far the authorities sustain the proposition I have laid down, that it is the neutral only, and not either belligerent that can complain of such violation, at least before any court of justice. I shall cite for convenience sake, the letters of "Historicus" to illustrate the matter. They are sustained by the force of their reasoning and also in every case, by the citation of authorities. There is no rule upon the point now under consideration laid down in the letters of "Historicus," which is not supported by authority, not only from international law, and the text writers, but to a great extent, by the decisions of the Courts of England and of the United States themselves.

Mr. Harcourt says, p. 150: "The elementary and universal "principle which lies at the root of the whole question, is the "absolute title of the neutral sovereignty to immunity, whether "as regards its territory or its prerogatives, from the interference "of belligerent operations of any kind. A violation of this immunity "is one of the clearest and highest offences against public law. "For one belligerent to pass through the neutral territory without "the leave of its Sovereign—to carry on hostile operations within "neutral jurisdiction; to levy soldiers or sailors, or to equip "vessels of war within the neutral soil—are familiar instances of "violations of the rights of neutral sovereignty. They are acts "eminently unlawful, and the neutral Government is entitled to "prohibit, and, if necessary, to avenge their commission. In "order the more clearly to illustrate the argument, I will select "the particular instance of levying forces and equipping arma-"ments by one of the belligerents within the neutral territory, "without the leave of its Sovereign; in order accurately to exam-"ine the rights and duties to which such an act gives rise. It is "now admitted on all hands (though the matter was at one time "faintly disputed) that such conduct on the part of a belligerent "is a gross violation of the rights of the neutral Sovereign." And he says at p. 151, "Such acts are a clear violation of right as be-"tween the offending belligerent and the neutral government." And at page 151 he continues, "Such proceedings are, therefore, "upon both grounds in the highest degree unlawful; municipally, "as between the Sovereign and the subject; internationally as "between the offending belligerent and the offended neutral."

This is a statement in succinct and clear language, of the doctrine which pervades every case cited on this point by the Counsel

for the prosecution. It is an unlawful act, they say both municipally and internationally, to violate the neutrality laws of the neutral power; and their position is unassailable to that extent. But I do not agree with them as to the inference they draw from this rule as applied to the present case. Our laws upon this subject are not made to protect the United States, but to protect ourselves. Their object "is to prevent foreign nations injuring us, not to protect "them from one another"—("Historicus," p. 152.) And the breach of them is a matter with which the other belligerent has nothing to do. "The right which is injured by the act of the "offending belligerent is the right of the neutral government, and "not that of the other belligerent." And "the important conse- "quence of this proposition is, that it is the neutral and not the "belligerent, who is strictly entitled to claim or to enforce the "remedy. And he is the only person who is entitled to complain "of and to redress its infraction." To these statements of the principles applicable to this point in which I use the words of Mr. Harcourt, I might add also in his language that "when this "point is properly apprehended, the solution of the question be- "comes simple and satisfactory." And I have no doubt but that the doctrine thus laid down is a sound one. It may be illustrated by the instances of the passage of troops through neutral territory (1 Kent, p. 119) the levies of troops in the neutral country (Ib., 119); Captures in neutral waters which are declared to be "*as be-* "*tween enemies* to all intents and purposes rightful" (3 Wheaton, Rep. 435. The Etrusco 3 Rob. 162), and captures made without the territory by vessels which have been equipped in violation of the laws of the neutral state. (Brig Alerta vs. Blas Momet, 3 Peters 425). These illustrations are cited by Mr. Harcourt, (pp. 153, 4 and 5), and they bear a close analogy to the various breaches of neutrality charged against the prisoners: namely, that they organised in this country; that they passed through it on their way to St. Albans, and that the expedition proceeded from this country. These are on all fours with some of the illustrations I have referred to, as cases in which the neutral alone "can com- plain of or redress" the violation of her territory; and that "the right which is injured is the right of the neutral alone," and "not that of the belligerent."

I have taken these authorities from Mr. Harcourt's book for convenience merely, but it would be easy to multiply them. The correctness of the doctrine they lay down cannot, I think, be successfully disputed. Counsel have cited a number of authorities to prove that a breach of neutrality is unlawful, that captures in violation of neutrality are subject to be declared void, and are in violation of international law; but they have not cited any authority

to prove that such illegality or such violation has any other effect than to make the offenders responsible to the neutral.

In matters of violated neutrality the neutral alone is the judge. In this case, if our Government permitted the passage of Young with his party through our territory, as an armed party of Southern troops, the United States Government might complain to our Government of the granting of the permission, unless we have granted similar privileges to her troops, in which case she could not. But such passage, and still less a peaceful passage, of unarmed or apparently unarmed men through our territory, can afford no grounds to the United States to appear before our Courts, and urge that our neutrality has been violated; and such a charge from them assumes a character of absurdity when it is made a ground, indirectly it is true, but still a ground, for an application that the offenders be handed over to them for punishment. If that is law I am at a loss to imagine upon what principle it can be held so. I have not found such an opinion laid down in the books, and I cannot but consider that it proceeds from fallacious reasoning. But there are recent illustrations of this view precisely in point. The applicants have endeavored to shew that the prisoners had become British subjects, *pro hoc vicê*, as they term it, and subject to the obligations of British subjects. But even granting that they were actually British subjects, which is the most favorable case for the applicants, the rule contended for would not apply, if they acted under a commission from the belligerent.

I have already adverted repeatedly to the Gerity case, but I must again refer to it in this behalf. Ch. J. Cockburn says: "I "concur in thinking that persons so acting, though *not* subjects of "a belligerent state, *and though they may be violating the laws of* "*their own country* * * * such persons cannot be treated as "pirates." In the Chesapeake case Judge Ritchie, speaking of neutrals engaging in hostilities, says: "They may make themselves "amenable to the *law of their own country* * * * but they "cannot be dealt with by the belligerent against whom they are "acting, as pirates." And further on he states: they cannot "*without any commission or authority* fit out *in a neutral country* a hostile expedition against a power at peace with such country," &c., &c. And he warns them that if they do so, they must take care to have a commission. In the Gerity case the party went on board the vessel at a neutral port; in the Roanoke case they did so also; in the Chesapeake case the prisoners were British subjects yet it was distinctly laid down in two of those cases that a violation of neutrality did not affect the character of belligerency in the prisoners; and in the third, so far as I know, the question was not attempted to be raised.

I am therefore constrained to hold that the attack on St. Albans was a hostile expedition authorised both expressedly and impliedly by the Confederate States; and carried out by a commissioned officer of their army in command of a party of their soldiers. And therefore that no act committed in the course of, or as incident to, that attack can be made the ground of extradition under the Ashburton treaty. And that if there had been any breach of neutrality in its inception, upon which point I state no opinion, it does not affect this application, which must rest entirely upon the acts of the prisoners within the territories of the State demanding their extradition, and upon their own *status* and authority as belligerents.

Before pronouncing the judgment which is indicated by these remarks, I would however say a few words upon another branch of the case, which involves considerations of the highest character; and which, though I do not allude to them as deciding this case, must have their weight whenever political considerations appear to form an element in any act for which extradition is demanded. It is conceded without controversy, by writers and by the Courts that extradition laws are to be interpreted by the law of nations, in so far as the obligations created by them on the part of one nation to another are concerned;—and that the then existing public law of both nations form an essential part of the national compact which is created by the passage of an extradition treaty. In 1842, when this extradition act was passed, the public law of Great Britain as well as the public law of the United States became incorporated with the national compact. It can not be said that England or the United States passed this act without reference to the public law of either country. Then, it became part of the contract. The stipulations of the contract with regard to the definitions of the crimes covered by it, were to be carried out in conformity with the municipal laws of both countries, in so far as they agreed. We have then the law of nations, and both the public and municipal law of both countries, combining to form the compact effected by the passing of the Ashburton treaty.

Now, if the public law of both countries, at the time the extradition Act passed, recognized the principle of international law, that lawful belligerents are entitled to all rights incident to a state of belligerency—that should be regarded as the law governing us, just as much as if it were actually inserted in the Treaty. But the United States deny that the so-called Confederate States are lawful belligerents, and though virtually they treat them as such, they refuse formally so to recognize them, as to give them that *status* in their Courts of Justice. It is upon their denial of the position of belligerency to the Confederate States, that such claims as those

we read of, on account of the depredations of the Alabama and the like, are based. But we cannot be influenced by the position which the United States have thus chosen to assume. They might as well choose to ignore portions of the stipulations of the Treaty itself, as insist upon the acceptance of such an interpretation of it. For my part I must, at all events, adopt the view entertained by my own country, and finding that differ from the one adopted by the United States, I feel additional responsibility and the necessity of increased caution, when I am required by the latter country to do my part towards the carrying out of the Treaty. The United States themselves, and all civilized countries, make a wide distinction between offences committed during a normal state of things, and those which are incident to political convulsions, or the unusual condition, politically speaking, of any portion of any country. Under this distinction, political offenders have always been held to be excluded from any obligation of the country in which they take refuge to deliver them up, whether such delivery is claimed to be due under friendly relationship, or under treaty, unless in the latter case, the treaty expressly includes them. The case of fugitive slaves appears to me to rest to some extent on the same ground; and on principle, the extradition of a fugitive slave for taking life in defence of his right of personal freedom, would seem to me to be unsustainable, except by a nation recognizing by its laws and within itself the institution of slavery. And deserters have been usually treated as being in the same category. Political offenders, however, form the most conspicuous instances of exclusion from the operation of the extradition law. No nation of any recognised position has been found base enough to surrender, under any circumstances, political offenders, who have taken refuge within her territories—or if there be instances, they are few in number, and are recorded as precedents to be reprobated rather than followed.

And it is in connection with struggles like that now going on in the United States, that the doctrine of asylum has received its most remarkable illustrations. The famous letter of Lord Palmerston on the subject of the Hungarian refugees, has been repeatedly adverted to, and contains such an exposition of the principle as might have been expected from that statesman.

(The learned judge here referred to Wheaton at pp. 40, *et seq.*, and 139, *et seq.*, discussing at considerable length the position and relations of a nation during a civil and revolutionary war; also the effect of changes in the obligations of treaties, where either party to them has been revolutionized.)

I do not hold, however, nor have I any right to hold, that the treaty is not in force, by reason of the unhappy circumstances in which the United States find themselves. But I do think that I

am bound to scrutinize with a greater degree of caution, the circumstances of any case which appear to possess a political character, or which seem to grow out of the struggle which is now proceeding. And I must be the more scrupulous in weighing the pretensions of the prisoners as to their justification by their possession of a belligerent or political character, when I know, that the defence arising out of such a character, which England would recognize as valid, if sustained; would not even be received or listened to in the United States as being sufficient in law, however fully substantiated. This question was discussed in the United States, during the trial of the "Savannah" case; and the defence of the prisoners that they were commissioned belligerents, was ignored by the dictum of Judge Nelson, charging the jury, as matter of law, that neither he nor they could take that defence into consideration at all, until the belligerency or independence of the Southern States was recognized. It behoves us, therefore, to be satisfied that the offence of robbery, according to our interpretation of the position of the Confederates, has really been committed, before I consent to order these prisoners to be remitted for a trial of the issue they raise in their defence, to a tribunal which would ignore that defence as insufficient in law, however satisfactorily established; and I consider the remarks of Judge Crompton already referred to, as being peculiarly appropriate to such a condition of things.

With this view of my duty, I have gone carefully and at perhaps unnecessary length into this matter. I have considered it proper to enter at greater length into the examination of some questions, which perhaps in themselves admit of no great doubt, but upon which in my humble judgment erroneous views have been entertained, and urged with great earnestness at the Bar. I have endeavored to guide myself, by what is recognised as law by the civilized world, instead of suffering myself to be swayed by popular cries, or by the passions and influences which the proximity of this lamentable convulsion has stirred up among us. And I have come to the conclusion that the prisoners cannot be extradited, because I hold that what they have done does not constitute one of the offences mentioned in the Ashburton treaty, and because I have consequently no jurisdiction over them. I am of opinion therefore that the prisoners are entitled to their discharge.

(The conclusion of the learned Judge's remarks, which occupied three hours and a half in the delivery, was greeted with loud cheers in Court, which the officers wese unable to suppress; and which were taken up and repeated by the crowds in the lobbies and outside the building.)

Hon. Mr. Abbott.—I would like to know what my learned friends for the prosecution of things intend doing upon the other charges?

Mr. Devlin.—I propose to proceed with every charge against the prisoners.

Hon. Mr. Abbott.—When will you proceed?

The Court.—The prisoners are remanded till Saturday on the second charge, when the enquiry upon it will come up.

WEDNESDAY, April 5th.

At half-past ten o'clock this morning, the five prisoners, Bennett H. Young, Marcus Spurr, Squire Turner Teavis, Charles Moore Swager, and William Huntley Hutchinson, were brought into Court, and soon afterwards Mr. Justice Smith took his seat on the bench. Mr. Johnson, Q. C., and Mr. Carter, Q. C., were present on behalf of the Crown, and Mr. Devlin on behalf of the United States. The Hon. Mr. Abbott, Q. C., Mr. Laflamme, Q. C., and Mr. Kerr were present on behalf of the prisoners.

Mr. Devlin stated that since the last sitting of the Court he had been officially informed by the Hon. Mr. Cartier that after the judgment of His Honor on the charge for the robbery of Mr. Breck, it was the intention of the Government to proceed against the prisoners for breach of the neutrality laws. Having communicated this fact to the United States Government, he (Mr. Devlin) was instructed to withdraw the charges against the prisoners before the Court. He accordingly asked to be permitted to withdraw the charges.

Mr. Abbott was in hopes the learned Counsel would go one step further, and say that no further application for extradition by reason of the occurrences of the 19th October last, would be made by the United States government.

Mr. Devlin said the learned Counsel asked too much of him, as his functions ceased before this Court, and did not extend beyond the cases actually before his Honor.

Mr. Carter said that as one of the Counsel for the Crown, he might be permitted to say something with reference to the rumors which had been circulated as to the course the Government intended to pursue. The Government had adopted such means as would be most likely to bring these men to trial on charges of violating our neutrality laws; but it was not the intention of the Government to institute, nor would they aid in instituting, nor would they countenance, any further proceedings with a view to the extradition of the prisoners. So far as the Government is concerned, he desired to disabuse the public mind of a misapprehension in relation to the course of the Government. It might be, and had been, asked, why the Government did not proceed against the prisoners, in the first instance, for violation of the neutrality laws. No such proceedings could have been taken. It was only when

the prisoners had gone on their defence, and the line of defence had been developed, that any evidence was adduced to form the basis of the judgment, that they were to be regarded as belligerents, and in consequence of that judgment, and then only, could the Government take any proceedings against them for breach of neutrality.

Mr. Abbott was very glad to hear so distinct a declaration from the learned Counsel for the Crown; but he had yet to learn that the Government could do anything in such matters. He would like to know if the Government could control the law. The Statute had accurately prescribed the process by which enquiries of this nature were to be conducted, and the Government could neither promote nor prevent such inquiries. The United States Government had free access to our tribunals to demand a judgment authorising extradition; and it was the magistrate alone, before whom such a proceeding might be taken, who could determine whether the circumstances would justify extradition or not. The Governor-General might finally prevent the extradition of the prisoners by refusing to sign the warrant, and a pledge that he would so refuse, would settle the matter. But he (Mr. Abbott) did not understand that any such pledge was given by the Counsel for the Crown; nor did he ask for or expect it. If the case came up, the Governor would doubtless act according to his discretion, and under the advice of his constitutional counsellors. But it was the United States who should declare what they intended to do, as upon them depended the initiation of proceedings. He therefore desired the learned Counsel for the United States, in order to allay the feeling of the public, to declare that it was not the intention to proceed with any other charges. The Government had declared their intention to remove the prisoners to Upper Canada; and the learned counsel for the United States had withdrawn all the charges then before his Honor; these charges originally consisted of the case of Breck, already disposed of, and that of assault with intent to murder. Let his learned friend (Mr. Devlin) state that the United States abandoned their claims for extradition, and that would be sufficient. He knew the extraordinary excitement that had been created; not only among those persons who were against the extradition of the prisoners, but also among those who held a different view; by the belief that the removal of the prisoners to Upper Canada was only intended to bring them within the jurisdiction of Judges who were supposed to entertain a different view of the law from his Honor. The precautions taken to put down any violence, proved the extent of that excitement. His learned friend was a citizen of Montreal as well as himself, and he could not desire to see the city the scene of tumult and perhaps of bloodshed, all of which might be prevented by a word from him. He (Mr. A.) of

course made no pretension to asking for this as a right. He only suggested it as a proper step to tranquillise the public mind.

Mr. Devlin said it was humiliating to the last degree to be obliged to listen to such statements. Was it possible that the causes of law and order have no friends, in this city; that we are ruled by a mob; that justice had fled altogether from amongst us; that the Government of Canada must succumb to, and in all its future dealings with the country be influenced and guided by, the rowdy element. Mr. Abbott admitted that the Government was right in bringing these men to trial for a violation of Canadian law; but the next moment he told them that this right could only be exercised upon certain conditions, dictated by the prisoners, otherwise we might find ourselves plunged into a state of tumult, riot, and bloodshed. But he disregarded these threats, and believed that the Government would be supported in the exercise of its legitimate authority. We were gravely told, that the citizens of Montreal were excited to an alarming degree, because the Government had dared to hold the St. Alban's raiders to account for having violated the sanctity of the asylum, afforded to them in Canada; and that it required the positive assurance actually demanded from the Counsel for the United States, to restore tranquillity, to ensure confidence, and to allay the rising wrath of the exasperated citizens. Well, for his part, he would repeat again and for the last time, that he would make no other promise or pledge than that actually given; and if his refusal to do so, should entail all the disastrous consequences indicated in the speech of his learned friend, he (Mr. Devlin) would say far better and more honorable would it be to encounter these disorders, than to incur the odium of entering into dishonoring bargains with persons accused of crime, for the privilege of being allowed to put them upon a trial, which they knew well would terminate like those through which they have heretofore so successfully passed. In so far as the United States were concerned, the liberation of the prisoners was not feared by his clients. They had met and conquered more troublesome and more desperate enemies, and more formidable assailants than the persons now before this Court, and could do so again. But what the United States do care about was, our good faith. They wish to know whether we mean to fulfill our treaty engagements; whether we intend to preserve our neutrality, or whether while pretending friendship, we were not acting the part of war's disguised and treacherous enemies. This was the true cause of the interest taken in the extradition of the offenders by the United States.

Mr. Carter said that he did not know what further statement his learned friend (Mr. Abbott) could ask, after the statement of the learned Counsel for the United States. It would clearly be impos-

sible to entertain an application in Upper Canada after the Government had instituted proceedings based on these acts, as acts of hostility, and not as common robberies. The Government was the Government of Upper Canada as well as of Lower Canada, and would not be likely to disclaim in Upper Canada what it had authorized in Lower Canada. He thought it unfair towards the learned Counsel for the United States to ask from him a pledge after the declaration he had made.

Mr. Abbott said he had asked no pledge, he had simply suggested a declaration of intention, which the newspapers of the day stated, "by authority," that the learned Counsel was empowered to make. He had suggested this, and instead of it, he had got a speech from Mr. Devlin, in which any such declaration was carefully avoided. Besides, this speech was filled with assumptions as to the position of the prisoners and their friends, which were simply ridiculous. No one objected to the prisoners being tried for a breach of neutrality. He (Mr. A.) had always been of opinion that they ought to be; and although the investigation had proved that there was little if any ground for the charge, still no one objected. But what had aroused this whole community, was the belief that the removal of the prisoners was only a dishonorable artifice, by means of which, the United States Government were to be enabled to evade the solemn judgment, rendered in this cause in favor of the prisoners. That impression could be destroyed by a word from his learned friend, uttered openly here in the face of the community: and he had listened carefully to the outburst of his friend, only to find with regret that he carefully avoided uttering that word. He again begged of him to consider whether he might not yet say it.

Mr. Devlin reiterated the instructions he had received to withdraw all the charges before His Honor. The proceedings for violation of the neutrality laws had been instituted, before he addressed the Hon. Attorney-General on the subject. He contended that his learned friend (Mr. Abbott), as one of the legislators of the country, owed it to the laws of his country, which he had helped to make, that he should see that they were carried out, and to make every effort to that effect. Should we by our sympathy for the South, or a desire to see the North crushed, say to them, that no matter what offences were committed against them, we would not yield up the offenders; and this too for men who would be rejoiced to see Canadians shedding each other's blood? He would inform Mr. Abbott that there were many in this city whose sympathies were not so much with the South as to cause them to permit the laws to be trampled upon.

Judge Smith was disposed to give the declaration of the Counsel for the United States its widest signification; and said that he

could not conceive that any intention, of the nature apprehended by Mr. Abbott, could exist, after the declaration of the learned Counsel for the prosecution. No Court in the country could again entertain a demand for extradition in the St. Albans case, because it had been disposed of on the broadest ground; and Judges *quoad* such matters were Judges of the Empire, having concurrent jurisdiction, and could not a second time take up what would be virtually the same question.

Mr. Kerr regarded the declaration as a final withdrawal of all claims for extradition. The Governor-General could not, in the face of such a declaration, sign a warrant for the extradition of the prisoners. It was equally binding on the Government of Canada and the Government of the United States, and they could not recede from it without gross violation of honor.

The Judge thereupon ordered that the prisoners be discharged.

Mr. Abbott asked the Court to order that the private property, money, and private papers, of the prisoners be restored to them.

Mr. Carter objected as to the papers of record.

Mr. Abbott said those papers were necessary to the defence of the prisoners.

Mr. Johnson said that the Court had not the power to dismantle the record in such a manner.

Judge Smith ordered that the papers remain in the official custody of the Clerk of the Peace; and granted the application in other respects.

W. Ermatinger, Esq., J.P., and E. Clarke, Esq., J.P., being present,

Mr. Carter said, addressing them, that with reference to the information which had been laid before them, and on which their Honors had issued warrants for the arrest of the five prisoners on charges of breach of the neutrality laws, he now asked to be permitted to withdraw the proceedings, with the view to the removal of the enquiry to Toronto.

The prisoners were discharged accordingly. They were immediately taken into custody by a peace-officer from Toronto, under a warrant from Recorder Duggan; and were removed to Toronto on the same day, by special train.

APPENDIX.

At the Court at Osborne House, Isle of Wight, the 4th day of February, 1865.

THE QUEEN'S MOST EXCELLENT MAJESTY.

Lord President—Earl of Clarendon, Duke of Somerset, Mr. MASSEY.

Whereas, by an Act of Parliament passed in the Session of Parliament held in the 6th and 7th years of Her Majesty's Reign, intituled: "An Act for giving effect to a Treaty between Her "Majesty and the United States of America for the apprehension "of certain offenders," it was by the 5th section enacted that if by any law or ordinance made by the Local Legislature of any British Colony or Possession abroad, provision should be made for carrying into complete effect within such Colony or Possession, the objects of the said recited Act by the substitution of some other enactment in lieu thereof, then it should be competent to Her Majesty, with the advice of Her Privy Council, (if to Her Majesty in Council it should seem meet, but not otherwise,) to suspend the operation within any such Colony or Possession of the said recited Act, so long as such substituted enactment should continue in force there and no longer.

And whereas, by an Act passed by the Legislative Council and Assembly of Canada, in the 12th year of the Reign of Her present Majesty, intituled: "An Act for giving better effect within this Province to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain offenders," (which Act was afterwards incorporated in and continued by the 89th chapter of the Consolidated Statutes of Canada, under and by virtue of another Act of the said Legislative Council and Assembly, passed in the 22nd year of Her Majesty's Reign, intituled: "An Act respecting the Consolidated Statutes of Canada)," provision was made for carrying into complete effect, within the said Province, the objects of the said first recited Act of Parliament.

And whereas, by an Order in Council, made on the 8th day of January, 1850, Her Majesty, by and with the advice of Her Privy Council, was pleased to suspend the operation of the said first recited Act in Canada, so long as the substituted enactment contained in the said Act of the Legislative Council and Assembly of

Canada, of the 12th year of Her Majesty's Reign, should continue in force and no longer.

And whereas, by another Act passed by the said Legislative Council and Assembly in the 24th year of the Reign of Her Majesty, intituled: "An Act to amend chapter 89 of the Consolidated Statutes of Canada, respecting the extradition of fugitive felons from the United States of America," further provision hath been made for carrying into effect within the said Province the objects of the said recited Act of Parliament, by the repeal of certain sections of the said chapter 89 of the said Consolidated Statutes, and by the substitution of other provisions in lieu thereof.

And whereas, by the said last mentioned Act, and by the said 89th chapter of the Consolidated Statutes of Canada, as thereby altered and amended, sufficient provision is made for carrying into complete effect within the said Province the objects of the said first recited Act of Parliament.

And whereas doubts may exist whether the effect of the said Acts of the said Legislative Council and Assembly subsequent to the 12th year of Her Majesty's Reign may not have been to render the said Order in Council of the 8th day of January, 1850, no longer operative in Canada, and it is expedient that such doubts should be henceforth removed and that the operation within the said Province of the said first recited Act of Parliament shall be and continue suspended so long as the above recited Provincial Acts shall be and continue in force there and no longer.

It is therefore ordered and declared by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, as follows:

I. The operation within the said Province of Canada of the said first recited Act of Parliament (if and so far as the same is now in force therein), shall be and continue suspended so long as the said Provincial Acts shall be and continue in force there and no longer.

II. Our Governor General of our said Province of Canada shall cause this order to be publicly notified and promulgated in the said Province as soon as conveniently may be after his receipt thereof, and the same shall take effect and come into operation upon and from the day of such public notification and promulgation thereof in our said Province, so as not to invalidate any Act lawfully done in the said Province before the date of such public notification and promulgation.

And the Right Honorable Edward Cardwell, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(Signed,) ARTHUR HELPS.

OPINION OF SIR HUGH CAIRNS AND MR. FRANCIS REILLY.

CASE FROM CANADA FOR THE CONSIDERATION OF COUNSEL.

Upon a demand made by the Government of the United States for the extradition of Bennett H. Young and four others on a charge of having robbed one Samuel Breck at St. Albans, in the State of Vermont, on the 19th day of October last, certain evidence has been taken which is to be found in the printed report of the proceedings from page 129 to page 220 inclusive.

The opinion of Counsel is requested upon the following questions arising out of the evidence:

Question.—Does the evidence sufficiently establish that on the 19th of October last, Bennett H. Young was a commissioned officer in the army of the Confederate States, and that the other prisoners were soldiers in that army, and were then under his command?

Answer.—We are of opinion that the evidence sufficiently establishes the points referred to in this question.

Question.—In what capacity does it appear from the evidence that he and his party acted on that day at St. Albans?

Answer.—We are of opinion that it appears from the evidence they acted in a belligerent character.

Question.—Under the circumstances proved and under the laws of war, had the prisoners the right of taking Breck's money, as the evidence shows they did (pp. 131, 2, 3, 4, 9, 141, 2)?

Answer.—Though in the conduct of war on land the capture by the officers and soldiers of one belligerent, of the private property of subjects of the other belligerent, is not often, in ordinary crises, avowedly practised at the present day, it is yet legitimate.

We are therefore of opinion that this question must be answered in the affirmative.

Question.—Is the character of the prisoners' acts at St. Albans in any respect affected by the facts proved in relation to Lieutenant Young's proceedings in Canada, or to those of any of his party; or by their having passed through Canada previous to the attack?

Answer.—We are of opinion that any such facts as those referred to in this question cannot affect the character of the prisoners' acts at St. Albans.

Question.—Does the taking of Breck's money under the circumstance proved, constitute the crime of robbery within the meaning of the Ashburton Treaty?

Answer.—We are of opinion that the facts proved do not constitute the crime of robbery within the meaning of the Extradition Treaty.

The acts of the prisoners derive their character in contemplation of law, from the *animus*, the intent of the actors. Their intent having been, as the evidence clearly shows, not colorably, but really, to exercise rights vested in them as servants of a belligerent Government, their acts are not to be tried by the standard of municipal law.

This principle is applied in the decision of the Supreme Court of the United States in *The United States* v. *Palmer*, 3 Wheaton Rep. 610, where, with reference to the case "when a civil war rages in a foreign nation, one part of which separates itself from the old established Government, and erects itself into a distinct Government," the Court laid down the rule, that "if the Government of the Union remains neutral, but recognizes the existence of a civil war, the Courts of the Union cannot consider as criminal those acts of hostility which war authorises, and which the new Government may direct against its enemy."

And to the same effect is the dictum of one of the Judges of the Court of Queen's Bench in the recent case of the Gerrit [where the prisoners had seized a ship at sea, saying they were acting for the Confederate Government] "though the Confederate States are not recognised as independent, they are recognized as a belligerent power, and there can be no doubt that parties acting in their behalf would not be criminally responsible"(12 Week. Rep. 863).

(Signed) H. W. CAIRNS,
FRANS. REILLY.

LINCOLN'S INN,
22nd March, 1865.

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