to say, *when* they shall determine that malice *was* in the heart, yet that it must in *this* case be done, as " it is the *intent* of the mind which con-" stitutes the crime," and elucidated the position by again putting a case hypothetically. " If the conversation in the canoe (*page* 301, *et* " *seq.*) was heard by *M'Lellan*, and without malice, or ill intention " towards *Keveny*, he neglected to give information of the design, then " he would be guilty of *concealment*, but would not be an *accessary*, for " it is the wicked design, the ill intention, which constitutes the crime." It was then explained, that this was an offence (viz. *misprision of murder*) which the law punished, and sometimes severely too, and adverting again to this conversation: " But, gentlemen, (*said his Honour*) if on " the other hand, as commanding officer of this canoe, he not only " heard the conversation, but approving of it in his heart, he neglected, " from a malicious intention, to prevent the crime, then, gentlemen, " he is guilty of what he is accused in the indictment. He is an *acces-*" *sary* to the murder, and in law *equally* guilty, and liable to the *same* " punishment as the *principal*." The *Chief Justice* cautioned the Jury against imagining that *he* had any intention of supposing that this *was* the case of *M'Lellan*, observing, that in passing a verdict: " It is *you* " (*the Jury*) who are to say, and you *only*, whether it was an omission " to perform a duty, arising from no motive of malice or ill-will to the " deceased, or whether he consented in his heart from malicious mo-" tives." Adverting to the suggestion previously made by the Court, it was observed that, if the Jury took a similar view of the evidence, the charge of accessary *after* the fact would perhaps be laid aside *alto-gether*, but to decide that point, it would be necessary to ascertain correctly what *in law* constituted the offence. Referring to *Hawkins' Pleas of the Crown*, established that, " the rescue of a felon from arrest," and " the voluntary suffering him to escape," were that crime, and that some held " those in like manner guilty who opposed the apprehending " a felon;" and from the same authority it was shewn, that " suffering " a felon to escape without arresting him on the bare concealment of a " felony, do not make a man an accessary."

The *Chief Justice* then noticed the following " very peculiar circum-" stances in this case"—that there was no magistracy in the Indian territory; the great and (as he believed) only outlet from that territory was in possession of *Lord Selkirk*, namely, the forcible detention of *Fort William*, was considered hostile to the interests of the *North-West* Company; and remarked: " It seems, I think, that he had a know-" ledge of the felony having been committed, and he brought *De Rein-*" *hard* to *Lac la Pluie*, whether with an intention to bring him to *Fort* " *William*, and then to send him to *Montreal*, where he might have " been tried, will be for you to determine. It will be for you to con-