3 and 4). It has even been said by a high authority (Dr. Lushington) that "not only in England, but throughout the dominions of the Crown of England governed by the law of England, no right of appeal in felonies ever existed. Nor are we aware that in any one single instance the Crown has ever, by the exercise of its prerogative, granted leave to appeal in any such case:" (*Reg.* v. *Edu'* *e* and *Byramjee*, 5 Moo. P. C. 272; Macph. Priv. Counc. p. 4.) However this may be, it is understood that the Canadian courts have refused an appeal in Anderson's case, as it seems they have an undoubted right to do.

Fourthly, it seems, therefore, that not even the Privy Council in this country—still less any inferior court—has the right to entertain an appeal in criminal cases from the judgment of the colonial courts. If, therefore, the English Court of Queen's Bench has assumed such an authority, it seems to have clearly exceeded its jurisdiction. Are the proceedings in the *ex parte* form of Anderson's case virtually those of an appellate court overruling the judgment of an inferior court? We submit that they are of this character. Ambiguous, evasive and obscure as were the affidavits; doubtful, as perhaps it may be, whether the English Court was bound to take judicial notice of the proceedings and law of the Canadian court—it cannot be doubted that all the facts were fully in the minds of the judges; and it may be thought that in a less momentous national question—involving perhaps a horrible question of life and death—they would have yielded to a technical and even substantial objections to the affidavits. They knew that Anderson stood committed to take his trial in his own country for murder, according to international treaty, as construed by Canadian Law: therefore that he was lawfully in prison according to Canadian law. Could they, therefore, hold that a *primâ facie* case of unlawful imprisonment had been established, without virtually overruling that law? But if our premises hold, it was not competent to the English court even to question that law. The only pretence for bringing up Anderson in the case would be for the purpose of bailing him. But murder is not a bailable crime. Surely also a criminal, duly committed on so grave a charge by a proper tribunal, can hardly be admitted to even a temporary release by a court of concurrent jurisdiction, without a grave imputation on the committing tribunal; and it may be doubted whether, in the annals of England—even in the days of despotism—a case can be cited of such an interference of a Superior Court of concurrent jurisdiction with the act of a court of equal dignity. What would the Court of Queen's Bench in England say if the Exchequer, or the Court of Common Pench, interfered by *habeas corpus* to release a prisoner whom the former court had declared to be lawfully committed; or if the Court of Queen's Bench in Canada assumed a similiar jurisdiction over the committals of either of the Superior Courts in England? When the right to interfere is so doubtful—and when the integrity and ability of the tribunal are unimpeachable, the case seems to fall within many which might be cited in which the court of concurrent jurisdiction has refused to act.

Lastly, we cannot leave this subject—nearly inexhaustable as it is—without saying a few words on the main question, whether Anderson has committed murder within the terms of the Ashburton Treaty. Undoubtedly, there is plausable reason for contending, on its literal constructing that he has not committed murder. The treaty and the statutes—English and Canadian, which embody it—agree in the express declaration that the criminal is to be given up only if he be charged "upon such *evidence* as according to the law of that part of her Majesty's dominions would justify his apprehension and committal for trial . . . . If the crime had been there committed." These words, if read apart from legal canons, and by the light only of interlocutory remarks in the English Parliament before the Ashburton Treaty was accepted, seem to indicate—at least to the unlegal mind—that if the charge do not amount to the crime named in the country where the prisoner is apprehended, he cannot be legally committed for trial or given up. On the other hand, it is a first principle of English, and we believe also of American law, that the *lex loci contractus celebrati*—the law of the country where the contract was made—governs the substantial construction of the contract; the *litis ordinatio*, the mode of the procedure, depends on the law of the *forum* or country where the contract has to be fulfilled. Where is an international contract such as a treaty to be considered as made? Must it not be held to be offered and accepted in the countries of each contracting party? and, if so, is not each who seeks to enforce it, on an alleged breach, entitled to claim the benefit of the *lex loci contractus celebrati*, and so to claim that disputed words shall be construed accordingly? Again, it is laid down that the two rules of most general application in construing a written instrument, are, "first, that it shall, if possible, be so interpreted *ut res magis valeat quam pereat*; and secondly, that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties. . . . . The construction must be such as will preserve rather than destroy; it must be reasonable and agreeable to common understanding; it must also be favourable and as near the mind and apparent intents of the parties as the rules of law will admit; and, as observed by Lord Hale, the judges ought to be cutious and subtle to invent reasons and means to make acts effectual, according to the just intent of the parties. They will not cavil therefore about the propriety of words when the intent of the parties appears; but will rather apply the words to fulfil the intent, than destroy the intent by reason of the insufficiency of the words:" (Broom's Legal maxims, 481, 482.)

Was it rather the intent of the parties to the treaty that each should give up to the other country only such criminals as to the restoring country should hold to be such; or such as were criminals according to the laws of the demandant country? If the former be the true construction, then either country can free itself from its obligations by daily changes in its penal code.

That construction of treaties must prevail which gives effect to the whole instrument, in preference to that which renders any part of it inoperative; (Wildman's Institutes, 180, vol. 1.) If the term murder be construed according to Canadian—or rather hypothetical English—law, it becomes partly inoperative as to the United States.

"Good faith clings to the spirit, and fraud to the letter of the convention; *in fraudem vero legis agit qui, salvis verbis legis, sententiam ejus circumvenit*:" (2 Phillimore International Law, 97.) "When the object of the agreement is universally to include everything of a given nature, and general description will comprise all particular articles, although they may not have been in the knowledge of the parties: (Ib. 98.)

Does not the larger definition of murder, according to the United States law, afford the canon of construction under this rule, rather than the restricted signification of the word in the English law?

The American view on the subject of ambiguities in treaties, has been well expressed by Judge Chace, whose opinion seems to have been adopted by Dr. Phillimore: "The universality of terms is equal to an express specification on the treaty, and indeed includes it. For it is a fair and conclusive reasoning that if any class of cases were intended to be exempted, it would have been specified. The indefinite and sweeping words made use of by the parties exclude the idea of any class of cases having been intended to be excepted, and explode the doctrine of constructive discrimination:" (2 Phillmore 108.)

Such are some of the objections which will have to be met, if the Ashburton Treaty is to be interpreted solely by English technology and law, rather than by American law. Whatever may be the result, it is to be hoped that no fear of public opinion will make our judges shrink from their only function as pronouncers, and not makers, of the law. If America be