plication of immoderate severity in excess of what the exigency of the occasion imperatively called for. Neither could the continuance of martial law be excused even as regards criminal responsibility when the necessity which can alone justify it had ceased by the entire suppression of all insurrection, either for the purpose of punishing those who were suspected of being concerned in it, or for striking terror into the minds of men for the time to come. This was the substance of what we all concurred in thinking was the proper direction to be given to the jury as to the responsibility of a governor in applying or continuing martial law. This was all that appeared to us necessary to lay down in point of law."—*Daily News, June* 9, 1868.

It appears that Mr. Justice Blackburn had read the paper in which his views were stated to the other judges before the arrival of the Chief Justice in the room in which they assemble before going into court, but on the latter coming into the room Mr. Justice Blackburn made a verbal statement to him of what was embodied in the paper; and Mr. Justice Lush, in the letter already referred to, says that the paper contained only the general propositions mentioned by the Chief Justice in court, "adding that the application of the principles to the particular case required him (Mr. Justice Blackburn) to tell the jury what was the law of Jamaica." We gather that this reference to the law of Jamaica was not mentioned by Mr. Justice Blackburn in his verbal statement to the Chief Justice; but after the broad principles which the former had declared that he was prepared to lay down, it could scarcely be very material what he intended to say to the grand jury with respect to the law of Jamaica. We, therefore, attach no importance to what we assume was an omission in his verbal statement to the Chief Justice. Mr. Justice Lush further says of the paper—"In no other way did it refer to that law, nor did it state anything about martial law, or refer to the case of Gordon."

It is clear from this that the points mentioned by the Chief Justice in the passage we have quoted were the only matters of law stated by Mr. Justice Blackburn to the other judges, and the only matters of law, therefore, in which they expressed their concurrence. Now it may be admitted that Mr. Justice Blackburn in his charge to the grand jury did mention these points, and so far directed them in accordance with the views of the rest of the bench, but unfortunately he mentioned a great many more which he had not brought to the attention of the other judges, and which were directly opposed to the views expressed by the Chief Justice in his charge to the grand jury in the case of *Reg.* v. *Nelson and Brand.* With respect to the legality of martial law as applied to civilians, the meaning of the Jamaica statutes, and the removal of Gordon from Kingston into the proclaimed district, Mr. Justice Blackburn expressed opinions in a clear and decided manner which were not stated by him to the other judges, and which were totally opposed to those of the Chief Justice as laid down in the charge just mentioned. Not only was no account made of the views which the latter had stated with the greatest distinctness and force, but he was actually represented as sanctioning doctrines which ran counter to all that he had laid down with so much care as to show how fully he had considered the matter, and with so much clearness as to prevent the possibility of mistake.

The emphatic disclaimer by the Chief Justice of views which he was represented to have sanctioned, but from which he entirely dissented, was therefore not only perfectly justifiable, but imperatively called for. In a manner the most explicit, and in language the most unequivocal, he entered his protest against the opinions which had been expressed by the senior puisne judge in his charge to the grand jury of Middlesex.

"I differ, in the first place, from the learned judge in the conclusion at which he seems to have arrived that martial law, in the modern acceptation of the term, was ever exercised in this country, at all events with any pretence of legality, against civilians not taken in arms. The instance referred to is of most doubtful character. In the second place, while I never doubted that it was competent for the legislature of Jamaica to confer on the governors the power to put martial law in force. I entertain for the reasons I have stated elsewhere, very grave doubts whether the Jamaica statutes have any reference to martial law except for the purpose of compelling the inhabitants of the island to military service and subjecting them while engaged in it to military law. I abstain from expressing any positive opinion on so debatable a question, but I must, at the same time, say that, in my judgment, there is too much doubt on the subject to warrant a judge, in the absence of argument at the Bar and of judicial decision, to direct a grand jury authoritatively that these statutes warrant the application of martial law; nor does such a direction appear to me to be at all necessary, seeing that we are agreed that a governor, giving effect to those statutes in the sense in which they have been understood in the colony, would not be criminally responsible. But above all, I dissent from the direction of Mr. Justice Blackburn, as reported, in telling the grand jury that the removal of Mr. Gordon from Kingston into the proclaimed district for the purpose of subjecting him to martial law was legally justifiable."—*Daily News, June* 9, 1868.

With respect to the explanation given by Mr. Justice Blackburn, we cannot but consider it as unsatisfactory. It was neither a humble apology for what he had done, nor a vigorous defence of himself. It oscillated between the two, and it conveyed therefore the impression of a man who felt himself to be in the wrong, but who had not the generosity to admit it frankly. We are fully alive to the difficulty of the position in which the learned judge was placed; but a little more