

crime against the municipal code of the country upon which he thus helps to carry war; that he is not punishable as for such crime by that country; and that the responsibility rests upon his own Government alone to answer, as nations answer for their crimes to their equals. That is the concession. He does not deal at all with the case of a soldier straggling away from his colors to commit a solitary and separate murder. He does not deal with a case of alleged excess of authority. He supposes him to obey the precise directions of his Government, and, so doing, he declares him clothed with a personal immunity.

It has been said in some of the discussions of this subject, although not here, that McLeod left the *Caroline* after the whole object of the enterprise had been accomplished, and committed an unnecessary and distinct and malicious murder on shore. I can say only to this that no such fact forms any part of the basis of the opinion of the Secretary. He had either never heard of it, or he disbelieved it, or he assumed that the courts of law or the Attorney General would allow its proper influence to a discriminating circumstance so important.

If you turn to the fourth page of his letter you may see that the murder for which he supposes McLeod is indicted was "a murder alleged to have been committed *in the attack*," forming an inseparable, very painful part of the entire military violence exerted to capture and destroy the vessel, and not succeeding it. For the purposes of the concession, he takes for true the express declaration of Mr. Fox, "that the transaction on account of which Mr. McLeod has been arrested and is to be put on his trial," including the homicide as an unavoidable incident in it, "was a public transaction" conducted by Her Majesty's Government.

Such is the concession. I have the honor to submit, *first*, that the concession is right in point of international law; and then, that it was the duty of the Secretary of State to make it, and of the Government to act upon it, exactly as it was made and acted upon.

In entering on this investigation, then, you observe that, to a certain distance, we proceed on all sides of the Senate harmoniously together.

Thus, it is admitted by the Senator from Pennsylvania, and by every body, that persons taken fighting, or for having fought, in the battles of an open, general, regularly declared war, are not responsible as for crime committed by the act of fighting against the country which they devastate and wrap in mourning and blood. They become technically prisoners of war. As such, on a principle of policy, as a mode of prosecuting war, they are subjected to restraint, imprisoned, held to ransom, exchanged, and otherwise disposed of, with more or less indulgence and humanity, according to circumstances. But criminals, robbers, murderers, by the act of fighting, although the act involved the destruction of property and life, they are not, by the theory or practice of any civilized race of men.

Thus far we proceed together. On this admitted principle we all stand; and from this we all take our departure. The truth is, the nations have agreed, and that agreement makes the law of nations, that it is a duty and a virtue in the individual citizen, his first duty, his highest virtue, to be obedient to his own Government. They have agreed to regard him, as our own Decatur, the elder Decatur, said of his children, as the property of his country. Withersoever he goes, whatsoever he does, wheresoever he lies down slain in battle, in obedience to her sacred and parental command, it is, as the general rule, not imputed to him for crime