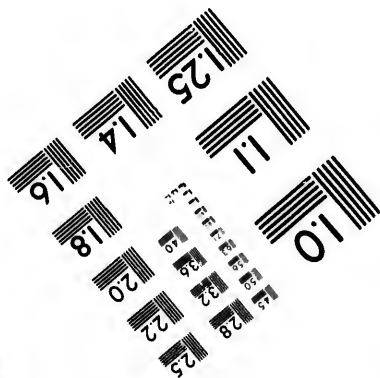
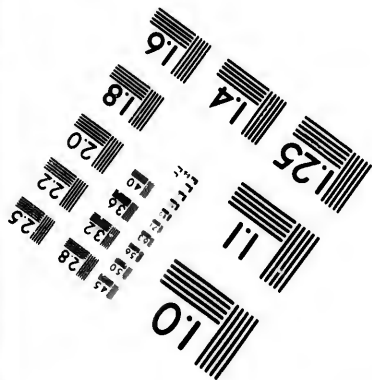
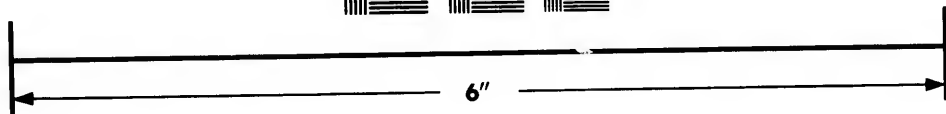
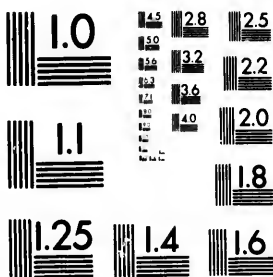


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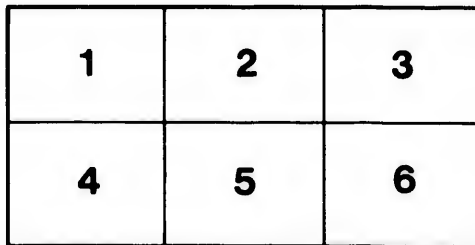
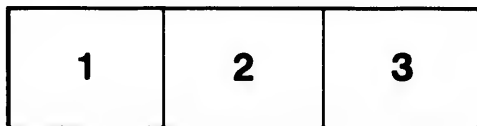
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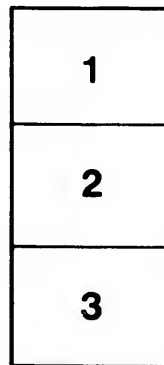
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Colmag Val 5/1841

CASE OF MR. M'LEOD.

DEGRADATION OF ENGLAND.

[Mr. Webster received a letter from Mr. Fox, dated March 12th, 1841, in which Mr. Fox declares that he is directed by the British government to make known to the government of the United States, that the British government *entirely* approve of the course pursued by Mr. M'Leod, in the affair of the Caroline, and *demand*s his *immediate* release on the ground that the transaction was of a *public* character, &c.]—*Extract from Mr. Fox's Letter to Mr. Webster.*

SUCH is the demand made by a British ambassador to a foreign nation, for the surrender of a British subject, incarcerated in a foreign dungeon, charged with the crimes of murder and arson; charges preferred against him for the part he was supposed to have taken in defending his country, by the orders of his sovereign, against foreign invasion; and the responsibility of which act has been assumed by the British government itself. Indignation almost prevents our recording, that the demand made for the immediate and instantaneous release of this gallant individual was made two months since, and that he is *still* in prison, and *still* to be tried. Is this England? Are we dreaming, or are we awake? Is this the country of which Oliver Cromwell said, "He would make the hair of an Englishman's head feared and respected in the most distant part of the world."

What has come of our pride, our spirit, our dignity, our glory, our national obligation? We hesitate not to avow our solemn conviction, that a more degrading, humiliating, disgraceful exhibition than that of

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our government; and we regret to add, our people, has not been witnessed for centuries, than in the case of M'Leod. Is our duty, our solemn duty, to be preached to us by Americans themselves? Are they to teach us our solemn obligations to our fellow-subjects? The following admirable remarks from the "New York Courier and Enquirer," will show the sentiments entertained by no inconsiderable portion of the American people on the subject:—

"When we first published the debate in the British parliament, wherein Lord Palmerston declared that the destruction of the *Caroline* was a national act, the responsibility of which was fully assumed by England, we at once declared, that in our opinion, all the rights and injuries of New York were merged in the rights and injuries of the United States; and that our government could not and would not war with the agent (M'Leod) when his principal assumed the responsibility of his acts. This appeared to be so plain and self-evident, that we were not prepared to see column after column of argument put forth, urging that the State of New York is in no way affected by the determination of England to justify the destruction of the *Caroline*—that we may proceed to try and execute M'Leod—and that he should not be given up in compliance with the demand of Great Britain.

"Precisely the reverse of all this is our opinion, in the premises. We hold that every hour we detain M'Leod in prison, after the distinct avowal by England, that she justifies the destruction of the *Caroline*, and holds herself responsible for that act, is as much cause of complaint and war, as it would be to execute him. From the very moment that the United States demanded satisfaction of England for the outrage on the *Caroline*, each and every of the parties to that act were harmless in the eyes of the law of this State. Nothing can be clearer, than that to our Federal Government is entrusted all the foreign relations of the country; and it follows of course, that when the United States determined that the attack upon the *Caroline* was an act of aggression upon the nation, and, consequently, demanded reparation for it by England, all offence against this State was merged in the offence against the nation. Had Great Britain replied that this was the act of a band of outlaws for which she was not responsible, then, undoubtedly, it would have been the duty of this State to have apprehended and punished them wherever they could be found. But she did no such thing. She knighted M'Nab, under whose advice the alleged outrage was committed; and she tells us to our teeth, 'It was my act, and I have no explanation, reparation, or apology, to make.'

"Under these circumstances, we seize upon M'Leod, and threaten to try and execute him if found guilty! Guilty—of what? Why waging war upon us under the orders of the British Government! And if M'Leod may be thus punished, why may not the Canadian authorities arrest the President or General Scott, if they should ever visit Canada, and try and execute them, if found guilty, of having been engaged in the battles of the Thames or Lundy's Lane? There is, in our opinion, no difference between punishing any soldier of the British army who fought against us during the late war, and this State punishing M'Leod. And we repeat, every day that we keep M'Leod in prison, now that the English government has assumed the responsibility of the destruction of the *Caroline*, is good ground of war against us. But this is not all—it is disreputable—disgraceful to this country, to retain this Mr. Alexander M'Leod in prison, when his government puts itself forward, and says, 'This is my act, and get reparation for it as best you may.'

Are Englishmen satisfied with the mere assurance that M'Leod will not be hanged? Is their love of liberty so deadened, that its deprivation is only to be viewed as a venial offence? Shame! shame! that all the generous impulses, the noble sentiments, its lofty spirit engen-

dered, should become extinct, and that we should look on with a criminal indifference, or a craven meanness, on the imprisonment of a brave fellow-subject, whose only crime has been his readiness to save his fellow-subjects from the destruction menaced by a foreign foe. In the House of Assembly in the State of New York, there was not wanting an American citizen to put the case in a fair and proper light, Mr. Hoffman; and as we gave, in several of our former numbers, the whole case of the Caroline, we shall give Mr. Hoffman's interesting speech, well worthy of attentive perusal, and by which it will be seen how fully all our sentiments are borne out. Mr. Hoffman appears to have some of the fire and patriotism of his ancestors, which appears almost extinct in us:—

“I have had this subject under consideration at my private room. It is one of a delicate and difficult nature. I have not felt at liberty, according to my sense of propriety, to canvass the matter over with members generally. What I have said has not extended beyond my colleague and messmate. I have been deterred from bringing it before the house, not because I thought it ought not to be brought here, but because I was undivided as to what the action of the Federal Executive and of this State might be. I saw very well that it might be, that the United States government—I speak of the Executive Government, that has this matter specially in charge, and whose acts may result in peace or its opposite—might not be unwilling to hold this thing where it is, until, by negotiation between the two sovereignties, the case might be reached. It was with a view that I might judge rightly on this question, and under an apprehension that I might interfere with the progress of the matter in negotiation, that I forbore to bring it up.

“Let me be more explicit, because questions of this nature are somewhat new to us. In the exercise of our powers of sovereignty, limited as they are, we have no foreign relations in theory; but we may have them in point of fact. The very controversy with Virginia shows, that though strictly we can have no controversy with a neighbouring state, yet you may have them in point of fact. External relations do exist. Take, for example, this very case. Suppose the sovereign power of Great Britain had applied directly to the executive of this State, and said in so many words, We have authorized and do ratify and confirm the act of this man: you have him, and are prosecuting him unto death before your tribunals. Would it be an answer for the executive to say, We can't hear the application—you must go to Washington? Such an answer might be given, but it must be apparent to what result it might lead. The sovereign making the application might say, we take no notice of your internal arrangements—your confederation—your constitution. We find you here in embodied millions, under an organized executive government.

“We find you here seizing on one of our own citizens for doing an act which we have authorized, and which we approve of, right or wrong, and we ask his release. What, Sir, is the alternative presented? Apologies—polite and civil expressions, such as your humble servant, at the end of a note, may answer very well in private life, to get rid of a difficulty, and yet say nothing. But when a sovereign speaks, he means something. He may not withdraw a request without dishonour and disgrace in the eyes of the world. The request once made, such in my judgment would be the condition of the sovereign that made it. He must have an answer. The sovereign to whom it is addressed may or may not, at his pleasure, reply; but he assumes on himself, whatever may be his course, the responsibilities of his position. They meet each other face to face, the embodied communities, as it were, of which they are the heads—the one asking the release, and the other refusing it, as the case may be; and in the judgment of the civilized world, the question must be brought to an amicable adjustment, or the reverse.

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They cannot part, except in friendship or hostility. There is no such thing as an appeal or certiorari to the supreme court. They must separate amicably, or resort to force and violence. That being the case, I put it to the judgment of this house whether the attorney-general should not be empowered, without consulting the courts, for high political reasons, to withdraw the indictment, to cease the prosecution, and thus leave the executive government to consult as to what remedy it would pursue, under the law and constitution, for an injury sought now to be punished through the judicial tribunals.

"Mr. H. here went into the facts connected with the case of M'Leod. Rebels, he said, had gained possession of Navy Island. They were largely drawn from the United States. He believed he might say their general and commanding officers were citizens of the United States. With hostile violence they assailed the shore of the neighbouring province, and put in jeopardy the lives and property of the subjects of a power with which we were at peace. The utmost efforts of the general and state governments, acting in co-operation, were insufficient to repress this movement, or to roll back from the Canada shore this cloud of danger and disturbance. By the rules of international law, the sovereign whose territory was thus imminently endangered, had a right to repel the danger, and, in the language of a memorable man, now no more, if in doing so, he should momentarily pass the line between his own and the territory of a friendly power, the act might be a subject of negotiation or complaint, but hardly be deemed justifiable ground of war.

"The local authorities in Canada believed themselves to be thus endangered, and believing also, that it was necessary and proper to destroy the boat, which they knew had been plying between our territory and the island in possession of the rebels—to use their own term in their own sense—they took it on themselves to fit out an expedition for that purpose. Did any man doubt that they thought this measure necessary, and a matter of undoubted right? Whether they judged right or wrong was not now material in the point of view in which the subject presented itself to his mind. Their object was to repel the danger that threatened them. They resolved to destroy the boat, and, in the execution of that design, ordered by the military authority, they unfortunately destroyed the life of an American citizen, within our territory, and for this the accused stands indicted before the judicial tribunals of this state.

"I submit, continued Mr. H., to this house—I know there is some diversity of opinion among legal men—even the judges may hesitate about it—whether an act of this kind, (if it should turn out to be as I have stated it,) judged by the local law, would not be murder. I put it to those who have devoted themselves to the study of international law, to the decisions of the judicial tribunals that have taken cognizance of it, especially those who have been led to look into the decisions of the admiralty courts, whether the prisoner can make a defence before the judicial tribunal of this state, on the ground that the state, of which he was a member, was in imminent danger of invasion,—that the authorities there ordered him on this duty. I may be mistaken, but my convictions are settled and strong, that he must be judged by the laws of this state, and that though he may have been acting in obedience to the orders of his superior officer, the judicial tribunals must consign him to infamy and death.

"But I put it to the sober judgment of this House, if it be true that the loyal authorities of Canada, under the belief that they were imminently endangered by the hostile gathering on Navy Island, did order this expedition, and that it was under this order that M'Leod acted; whether he did not do for his country what every man, not only American by birth, but every man who has a spark of American feeling in him, would not do for his own? If, Sir, sedition or rebellion should rage on the borders of this State, its standard collecting from Canada arms and munitions of war, as well as recruits, preparatory to an invasion of the very heart of the State—and in sight of the forces gathered to resist the danger, a boat should be found plying daily between the camp of the insurgents and the opposite shore—and if, under the belief that this boat was in the service of the enemy, orders should be issued on this side to destroy it—is there a man in this House—I will not insult the House with the inquiry—I ask if there is any man in this State, be he citizen or foreigner, who has set his foot here to dwell, that would

hesitate one moment to obey the order? For my own part, standing here in the face of this House and the country, though with a frame unsuited to engage in conflicts of violence, I am not prepared to confess to that degree of human baseness, that would make me hesitate to obey. And I affirm for all others—for my own constituents, who breasted the shock which resulted in the independence of the country, and who went again into the conflict when the conflict was renewed—that there is not a man of them, that under such circumstances would have faltered in girding himself to battle, and contributing his best services and his means toward repelling the expected invasion.

“I say, therefore, that whatever the judicial tribunals may determine as to the accused, that he is not guilty of murder. I say that in what he did, he rendered service to his country, which every American freeman has ever been willing to render, and cheerfully. The sovereign for whom he acted has approved of the act, and in that approval assumes the entire responsibility of it. If it had been done in time of war, it would have been deemed an act of ordinary warfare. It is for these high reasons of public policy that I say the Executive Government should be empowered to withdraw the indictment. Judged by our law, he must be condemned and executed, and I believe there is no escape for him. Judged by those high moral principles that constitute the basis of human society, he is not guilty.

“To execute him would be to stain the State with the guilt of murder—to draw down upon us the reproaches of the civilized world. It would be to invoke the vengeance of Heaven against a people that should thus outrage the dictates of humanity and patriotism. I say, that if we were armed to-day, and in the field—if the military force not only of these two millions of people, but of the sixteen millions with whom we are united, were now marshalled to punish this aggression on our territory, they should send this man before them with a safe conduct to his sovereign. The controversy is not with him. To prosecute him is revenge—to execute him is murder. Send him to his sovereign—the sovereign he has served as we would serve ours. If we have cause of complaint, let us wage war, not against the individual, but against the nation in whose name and by whose authority he acted.

“Let us take care, that in the event of an appeal to our sister States and to our own people for their co-operation against invasion from abroad, we do not in advance enfeeble our cause, by punishing in the person of an enemy that which we must not only commend in a citizen of our own State, but on which we must rely for success. No, no, Sir, if we expect the blessing of Heaven to be with us in any of these controversies, as it was with our forefathers—if we expect the deep-toned religious sentiment that distinguishes us above every other country under Heaven, to go with us—if the open courage and magnanimity which mark our army and navy, is to be enlisted warmly in our cause in any future conflict—let us not stain the banner under which they are to rally. So also, in reference to the adjourned controversies between this country and Great Britain—would it be wise to draw upon ourselves, in advance of any collision that may occur, the prejudices of the civilized world?

“Who does not see that in a controversy for territory with a nation that has grasped one hundred and twenty millions of people in the East—that has not only seized on the new continent of the South Pacific, but a part also of the continent of Africa—that has, in a word, extended itself everywhere—it is important that we retain what the character and genius of our institutions have won for us abroad—I mean the favourable judgment and partialities of the civilized world? But when the story shall be told that it required all the energy of the General and State governments to prevent certain restless spirits on our border from rushing into a neighbouring province in time of peace—that after this man had been indicted and committed and set at liberty on bail, he was again consigned to imprisonment at the behest of a mob—rely upon it, Sir, this mob, which, perhaps, numbered more stumps than men, will figure abroad as the people themselves, and it will be believed to be the result of the ascendancy of mob violence in this country over law and order. Not one of the one hundred and fifty millions in Europe, but will set that down in the account against us. Is it prudent or politic that we should arm against us the prejudices of the civilized world in a contest of the kind I have alluded to?

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"I beg gentlemen to reflect that postponement is not remedy—that this matter must be brought to an amicable adjustment, or that hostilities will be the result—that the parties in this controversy must either separate in perfect kindness, or resort to the ultimatum of sovereigns. I ask if it be wiser to put this man forward in the front of this controversy, than to place ourselves in the commanding, honourable, generous position I have endeavoured to point out? For my own part, I am entirely willing—nay anxious—that this man should go from among us—that the controversy should be carried on between the sovereigns of the United States and Great Britain—and I submit cheerfully to the result. I trust—since this question has come here—that our actions may be such as to put it in the power of the Executive Government to give this man a safe-conduct to his sovereign.

"Let us have the controversy on the merits of the case, in regard to which the whole civilized world will coincide with us. If, therefore, this call is made on the Executive, I trust it will be qualified in the usual manner, in order that he may not be obliged to respond, if he shall deem it to be inconsistent with the public interest to do so—for although we may command him, yet this is a point on which he should be left to judge for himself, on his responsibility as a chief magistrate. But after all, that, in my judgement, is not the best disposition that may be made of the question. The part that belongs to us is evident. It is to correct the error in the existing law—and I, therefore, move,

"That the subject be referred to the Committee on the Judiciary, with instructions to report a Bill providing for the entry of a *nolle prosequi* on the indictment against Alexander M'Leod, and for his safe-conduct.

In conclusion, we would call on our fellow-countrymen to rouse from the disgraceful apathy recently evinced in this extraordinary case. If Mr. M'Leod is now safe, as we trust he is, it will at least wipe off some of the stain and obloquy justly attaching to us for our criminal indifference. The spirit of our fathers cannot be dead; an insult offered to an Englishman by a foreign power, is an insult offered to the whole nation, it must be atoned for, or resented; and we cannot have become so degenerate as to view the loss of liberty which M'Leod has sustained as a subject not demanding the fullest and most ample reparation. We hope our call will not be made in vain, but that a strong expression of public sentiment, of British sentiment, will be the result. The noble Canadians, who crushed, by their own efforts entirely, an attempted rebellion, and gallantly repelled a foreign assault, deserve some consideration at our hands, but it is not by leaving them at the mercy of the assailants they routed, that this consideration should be manifested. But we forbear; we trust we have said enough to induce every Englishman to do his duty, and remove the reproach which must attach to the country by its silent submission to an outrage offered to one of its defenders.

