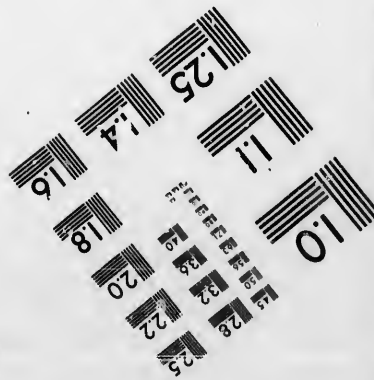
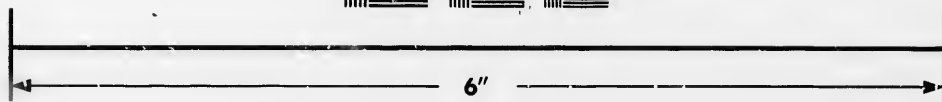
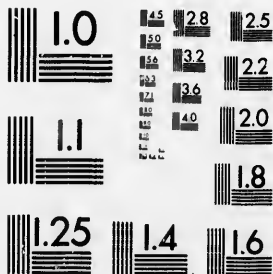


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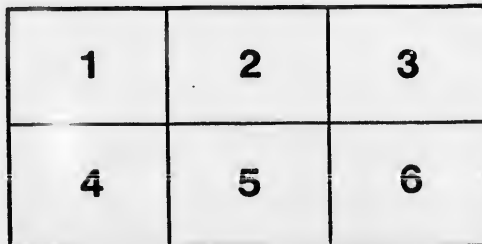
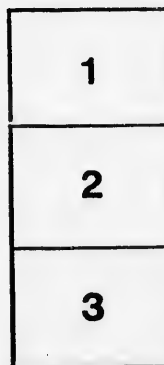
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S P E E C H

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M R . B E N T O N , O F M I S S O U R I ,

O N T H E

C A S E O F M C L E O D .

In Senate, Monday, June 14, 1841—On the motion of Mr. RIVES to refer so much of the President's message as relates to our foreign affairs to the Committee on Foreign Affairs.

Mr. BENTON would take this opportunity to express his opinions on the subject before the Senate, and would take the occasion to say that he would always choose to speak during the usual hours of business in the Senate, but if prevented from speaking at such hours, he must have recourse to those which were unusual, and, at this season of the year, oppressive. He would speak in the night if he could not in the day; refusals to adjourn should not debar him of his right. He had a right to speak, and should exercise that right, not to annoy the Senate or to delay business, but to discharge his duty to the country, and to show that he was able and determined to assert and to vindicate his rights.

Mr. B. believed that the gentleman whose correspondence was the subject of discussion, and who might be considered chiefly interested in it, (the Secretary of State,) would have no objection to this discussion; neither to its character, nor the time it would consume. That gentleman had done, at a former extra session, infinitely more than it was proposed to do now. Mr. B. spoke of the extra session of May, 1813, called by Mr. Madison to provide means of carrying on the war, and so large a proportion of which was consumed in partisan attacks upon the character and measures of the Administration. Mr. B. was a young man at that time, a visiter at Washington, and often took his stand among other visitiers in the crowded and heated lobby of the House. Standing in that place, he saw a Representative from the State of New Hampshire, now the Secretary State, [Mr. Webster,] submit his celebrated resolutions against the administration of Mr. Madison; and during the month which he remained at Washington, he heard these resolutions debated, day in and day out, by the whole phalanx of the Federal party, to the exclusion of the business for which Congress was called together, and to the delay of the supplies which the invaded and bleeding condition of the country so imperiously demanded. He heard the mover of the resolutions deliver his withering denunciations against his own Government; he saw him followed by the solid column of the Federal battalion then in the House; he saw the Democracy, patient and forbearing, giving them all the time they would ask, and all the scope they would take; and no one

availed himself more fully of Democratic forbearance than the mover of the resolutions himself. He had time and scope to his heart's content in attacking his own Government, and that in time of war, and at a called session of Congress. The recollection of this must have its effect upon the mind of him who was then the subject of so much forbearance. He must be willing, and even anxious, to extend to others the indulgence of which he has had the benefit. He must be willing that those who please should have their time and scope, (at this extra session of Congress, called in time of peace to take snap judgments on the American people,) to arraign an act of his, in which, now as near thirty years ago, he has the misfortune to appear on the wrong side of his country's cause.

Mr. B. said the history of our country contained a warning lesson to gentlemen who take the side of a foreign country against their own: he alluded to the case of Arbuthnot and Ambrister, seized among the Seminole Indians in 1813, and hung as outlaws and pirates by the orders of General Jackson. The news of that execution was heard with joy by the American people, who considered these Englishmen as a thousand times more culpable than the wretched savages whom they stimulated to the murder of women and children, and who had abandoned their own country, and the white race to which they belonged, to join savages against a country with which their own Government was at peace. The country heard the news of the execution with joy: they approved the act of General Jackson. Not so with the politicians—the politicians of the Federal school especially. They condemned it; partisan presses attacked it; and when Congress met, committees of each House of Congress reported against it—loudly condemned it—and were followed by a crowd of speakers. All the phrases now heard in claiming exemption for McLeod, and bewailing his fate, were then heard in deploring the fate of Arbuthnot and Ambrister. Violation of the laws of nations—inhuman—unworthy of the nineteenth century—shocking to humanity—barbarous—uncivilized—subjecting us to reprisals, and even to war from England—drawing upon us the reproaches of Christendom, and even the wrath of Heaven: such were the holyday phrases with which the two Houses of Congress then resounded. To hear what was said, and it would seem that the British lion would be instantly upon us. We were taught to tremble for the return news from England.

Well! it came! and what was it? Not one word from the British Government against the act of Jackson! Not the scrape of a pen from a Minister on the subject! Not a word in Parliament except the unsupported complaint of some solitary members—just enough to show, by the indifference with which it was received, that the British House of Commons had no condemnation to pronounce upon the conduct of General Jackson. Their silence justified him in England, while committees and orators condemned him here; and this justification from abroad, in a case where two Englishmen were actually hanged, should be a warning to gentlemen how they should commit themselves in a case where an Englishman is merely in the hands of justice, and has nothing to fear from "God and the country" if he is as innocent as he now alleges, and as humanity would wish him to be.

Gen. Jackson was right, and the committees and orators who condemned him were wrong. He was right in the law and in the application of the law. He had no musty volumes of national law to refer to in the swamps of Florida; and he needed none. He had the law of nature, and of nations, in his heart. He had an American heart, and that heart never led him wrong, when the rights, the interest, and the honor of his country were at stake. He hung the Englishmen who were exciting savages to the murder of our women and children; and the policy of the measure is no less apparent than its legality. Before that time, Englishmen were eternally in the ranks of the Indians, stimulating them to hostilities upon us: since that time no Englishman has been heard of among them. The example was wholesome—its effect salutary. It has given us twenty-five years of exemption from English interference in our Indian hostilities; and if the assassins of the Caroline shall be hung up in like manner, it will give us exemption from future British outrage along the extended line which divides the Union from the Canadas.

It is mournful, Mr. President, continued Mr. B. to see gentlemen of eminent abilities consulting books to find passages to justify an outrage upon their own country. Better far to throw away the books, and go by the heart. Then, at least, they would always have the consolation of being on their country's side. Better even to take the rule of the illustrious Commodore whose actions have shed so much lustre upon the American name, (Decatur,) and go for their country, right or wrong. Then they would always have at least their hearts on their side. Besides, there is no book which fits our case—which was written for the duplicate Governments which we possess. We have State Governments as well as a General Government; and these State authorities have their rights, and are sovereign within them. The protection of the lives, liberty and property of their citizens, is among these rights; the punishment of murder, arson, and burglary, are among the rights of the States. If there was nothing in the law of nations, as written in the books, to recognise these rights, it would be necessary and proper for us to cause a new line to be written in those books. But this is not the case. The law of nations, as they now stand, is sufficient for us. The passage quoted

from Vattel by the Senator from Pennsylvania is pointed and conclusive in our favor. It applies to the case of McLeod, and covers it; and if we give up that man, upon the demand of the British Government, we shrink from the defence of right, and suffer the law of nations to be violated in our persons.

This brings me to the case before us. What is it? The facts of the case are all spread out in official documents; and the evidence of them are clear and undeniable. An American steam ferry boat traverses the Niagara river; she carries passengers and property from one shore to the other. The English believe, and perhaps truly, that she carries men and arms to the insurgents in Canada; and without any appeal to our Governments, either State or Federal—without applying to us to put our own laws in force against her—an English officer, of his own head, without the knowledge of the British Government, determines to do—what? Not to watch the suspected vessel, arrest her in the fact, seize the guilty and spare the innocent, but to steal upon her in the night, board her asleep, and destroy her at the American shore, under the flag of her country. In the evening of the meditated outrage, volunteers are called for—fifty or sixty dashing, daring fellows—ready to follow their leader to the devil, for that was the language used; and it proves the expedition to have been a diabolical one, and worthy to be led as well as followed by demons. The arms were sabres and pistols; the season of attack, midnight; the means of approach, light boats and muffled oars; the progress, slow, silent and stealthy, that no suspicious sound should alarm the sleeping victims. The order was, *death and no quarter*. Thus prepared and led, they approach the boat in the dead of the night—reach her without discovery—rush on board—fly to the berths—cut, slash, stab and shoot all whom they see—pursue the flying, and besides those in the boat, kill one man at least upon the soil of his country, far from the water's edge. Victorious in an attack where there was no resistance, the conquerors drew the vessel into the midst of the current, set her on fire, and with all her contents—the dead, the living, the wounded and the dying—send her in flames over the frightful cataract of the Niagara. McLeod, the man whose release is demanded from us, was (according to his own declarations, made at the time in his own country, repeated since in ours, and according to the sworn testimony of one of the survivors,) an actor in that piratical and cowardly tragedy. According to his own assertions, and the admissions of his comrades, he was one of the foremost in that cruel work, and actually killed one of the "damned Yankees," to use his own words, with his own hands.

All this was in December of the year 1837. It filled the country with indignation. It fired the bosoms of the border settlers on a line of fifteen hundred miles. Retaliation was in every heart, threats in every mouth, and war imminent. Mr. Van Buren was then President. To calm the spirits of the excited, proclamations were issued to them. To prevent acts of retaliation, troops were raised and stationed along the line. To obtain redress for the outrage to our citizens, and the insult

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to our national character, application was made to the British Government to repair the wrong that was done. That Government delayed its answer to our just demand—avoided the assumption of the criminal act—excused and justified, without assuming it—rewarded the offenders with titles, pensions, and praises—and clearly encouraged them to do the like again. Diplomacy was still drawing out its lengthened thread—still weaving its long and dilatory web—still Penelopizing—when the same McLeod, the boaster in Canada of his active share in this triple crime of midnight murder, arson, and robbery, crosses over to the American side and repeats, in the hearing of Americans, and on the spot which had been the scene of his exploit, the audacious boast of his participation in it. Justice then took hold him. The laws of New York laid their hands upon him; and a grand jury of the vicinage, on an indictment regularly preferred, returned a true bill against him. A trial, of course, was to take place in the courts of the State whose laws had been violated, whose citizens had been murdered and robbed, whose peace had been disturbed, and whose authority had been set at defiance. The news of this proceeding flies to the British Minister here: that Minister addresses a note to the Secretary of State, (Mr. Forsyth,) demanding the release of McLeod; and the Secretary answered, by the direction of the then President, (Mr. Van Buren,) that this man being charged with offences against the laws of New York, the General Government had no right to interfere, and should not do so. This answer was read in the Senate in January last, when most of the present members of the body were then present—when the present Secretary of State and the present Attorney General were both present—when all the old Senators now here were present—and when this response of Mr. Forsyth, refusing to give up McLeod, or to interfere with the courts of New York, received the unanimous approbation of this chamber!

Mr. B. repeated the expression, unanimous approbation! and said that he would pause for correction, if he was mistaken. He paused. Several Senators exclaimed, "yes, yes."

Mr. B. continued: I remember the reading of that letter well, and the feeling of unanimous approbation which pervaded the chamber when it was read. Every Senator that spoke expressed his approbation. No one signified dissent; and the feeling was then universal that the proper answer had been given by Mr. Forsyth—the answer which the law of nations, the dignity of the Union, and the rights of New York required to be given. If I am wrong in my recollection, I repeat the request, let me be corrected now.

[Several voices cried out, "right, right." No one said the contrary.]

Mr. B. resumed: a great point—one vital and conclusive in this inquiry, is now established. It is established, that in the month of January last, when Mr. Forsyth's letter was read in this chamber, we were all of opinion that he had given the correct and proper answer; and among the Senators then present were the present Secretary of State, the present Attorney General, all the old Senators now present, and four-fifths of the whole

number now present. In a word, the Senate was constituted as it now is, with the exception of nine members who have gone out, and the same number who have come in.

In January last, as we now see, it was the unanimous sense of the Senate that McLeod should not be given up—that the course of justice in New York should not be interrupted; and this also, I feel justified in saying, was the sense of the House of Representatives. The McLeod correspondence was communicated to that body. Five thousand copies of it were moved to be printed. A reference of the whole was made to the Committee of Foreign Relations; and the judgment of the House appeared to be the same of that of the Senate.

In the month of January last, it may then be asserted, that the two Houses of Congress approved the decision of President Van Buren; and, according to that decision, McLeod was neither to be given up, nor the course of justice in New York interfered with by the Federal Government.

Mr. Fox received the answer of Mr. Forsyth—transmitted it to his Government—and received from that Government precise instructions to avow and assume the attack on the Caroline as a national act—to make a peremptory demand for the release of McLeod—to threaten us with serious consequences in the event of refusal—and, as the British newspapers said, to demand his passports, and leave the country—if his demand was not immediately complied with. It was on the evening of the 4th day of March—the day of the inauguration of the new President—that the news of these instructions arrived in this city, and along with them the war threats and the war speeches of the press and public men of England—the threat of many papers to send admirals and war steamers to batter down our cities—and the diabolical speech of a Peer of the realm, in the House of Lords, [Lord Mountcashel,] to excite our three millions of negroes to insurrection—to raise all the Indians against us—and to destroy our finances by bursting the paper bubbles upon which they floated.

It was on the evening of the 4th day of March that these instructions, this demand, this threat, and all these war annunciations, arrived in this city. The new President had just been inaugurated: his Cabinet had just been indicated: the men who were to compose the Presidential council were fully known; and I undertook at once to tell what would be done. I said to several—some now in this city, if not in this chamber—*McLeod will be given up; not directly, but indirectly. Underhanded springs will be set in motion to release him; and a letter will afterwards be cooked up to show to Congress and the people, and to justify what had been done.* This is what I said; persons are now in this city to whom I said it: and now let us resume the narrative of events—let us follow the current of facts—and see what was done by the new Administration which had just been inducted into office in the midst of triumphal processions, under the fire of cannon, the beating of drums, the display of flags, and with all the glorious pomp and circumstance of war. Let us see what they did.

On the 12th day of March, the new administration having had time to organize, Mr. Fox addresses to Mr. Webster a formal demand, in the

name of his Government, for the release of McLeod; and goes on to say:

"The grounds upon which the British Government make this demand upon the Government of the United States are these: that the transaction on account of which McLeod has been arrested, and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defence of her Majesty's territories and for the protection of her Majesty's subjects; and that consequently those subjects of her Majesty who engaged in that transaction were performing an act of public duty for which they cannot be made personally and individually answerable to the laws and tribunals of any foreign country."

And after enforcing this demand, by argument, contesting the answer given by Mr. Forsyth, and suggesting the innocence of McLeod, the letter proceeds to say:

"But, be that as it may, her Majesty's Government formally demand, upon the grounds already stated, the immediate release of Mr. McLeod; and her Majesty's Government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand."

This letter to Mr. Webster bears date on the 12th of March, which was Friday, and will be considered as having been delivered on the same day. On the 15th of the same month, which was Monday, Mr. Webster delivers to the Attorney General of the United States, a set of instructions, and delivers a copy of the same to Mr. Fox, in which he yields to the demand of this Minister, and despatches the Attorney General to New York, to effect the discharge of the prisoner. The instructions, among other things, say:

"You are well aware that the President has no power to arrest the proceeding in the civil and criminal courts of the State of New York. If this indictment were pending in one of the courts of the United States, I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a *malle prosequi* to be entered.

"Whether in this case the Governor of New York have that power, or, if he have, whether he would not feel it his duty to exercise it, are points upon which we are not informed.

"It is understood that McLeod is holden also on civil process, sued out against him by the owner of the Caroline. We suppose it very clear that the Executive of the State cannot interfere with such process; and, indeed, if such process were pending in the courts of the United States, the President could not arrest it. In such and many analogous cases, the party prosecuted and sued, must avail himself of his exemption or defence, by judicial proceedings, either in the court into which he is called, or in some other court. But whether the process be criminal or civil, the fact of having acted under public authority, and in obedience to the orders of lawful superiors, must be regarded as a valid defence; otherwise, individuals would be holden responsible for injuries resulting from the acts of Government, and even from the operations of public war.

"You will be furnished with a copy of this instruction, for the use of the Executive of New York, and the attorney General of that State. You will carry with you also authentic evidence of the recognition by the British Government of the destruction of the Caroline, as an act of public force, done by national authority.

"The President is impressed with the propriety of transferring the trial from the scene of the principal excitement to some other and distant county. You will take care that this be suggested to the prisoner's counsel. The President is gratified to learn that the Governor of New York has already directed that the trial take place before the Chief Justice of the State.

"Having consulted with the Governor you will proceed to Lockport, or wherever else the trial may be holden, and furnish the prisoner's counsel with the evidence of which you will be in possession material to his defence. You will see that he have skilful and eminent counsel, if such be not already retained, and, although you are not desired to act as counsel yourself, you will cause it to be signified to him, and to the gentleman who may conduct his defence, that it is the wish of this Government that, in case his defence be overruled by the court in which he shall be tried, proper steps be taken immediately for removing the cause, by writ of error, to the Supreme Court of the United States.

"The President hopes that you will use such despatch as to make your arrival at the place of trial sure before the trial

comes on; and he trusts you will keep him informed of what ever occurs by means of a correspondence through this Department."

A copy of these instructions, as I have said, were delivered to Mr. Fox at the time they were written. At the same moment they were delivered to the new Attorney General, [Mr. Crittenden,] who, thus equipt with written directions for his guide, and accompanied by an officer of high rank in the United States army, [Major General Scott,] immediately proceeded on the business of his mission to the State of New York, and to the place of the impending trial, at Lockport. About forty days thereafter, namely, on the 24th day of April, Mr. Webster replies to Mr. Fox's letter of the 12th of March; elaborately reviews the case of McLeod—justifies the instructions—absolves the subject—and demands nothing from the sovereign who had assumed his offence.

Thus, what I had said on the evening of the 4th of March had come to pass. Underhanded springs had been set in motion to release the man; a letter was afterwards cooked up to justify the act.

This, sir, is the narrative of the case—the history of it down to the point at which it now stands; and upon this case I propose to make some remarks, and, in the first place, to examine into the legality and the propriety of the mission in which our Attorney General was employed. I mean this as a preliminary inquiry, unconnected with the general question, and solely relating to the sending of our Attorney General into any State to interfere in any business in its courts. I believe this mission of Mr. Crittenden to New York was illegal and improper—a violation of our own statutes, and will test it by referring to the law under which the office of Attorney General was created, and the duties of the officer defined. That law was passed in 1789, and is in these words:

"And there shall also be appointed a meet person, learned in the law, to act as Attorney General of the United States, who shall be sworn, or affirmed, to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law, when required by the President of the United States, or when requested by any of the heads of the Departments, touching any matters that may concern their departments; and shall receive such compensation for his services as shall be by law provided."

Here, said Mr. B. are the duties of the Attorney General. He is subject to no orders whatever from the Secretary of State. That Secretary has nothing to do with him except to request his legal advice on a matter which concerns his department. Advice on a question of municipal law was doubtless what was intended; but no advice of any kind seems to have been asked of the Attorney General. He seems to have been treated as the official subordinate of the Secretary—as his clerk or messenger—and sent off with "instructions" which he was to read and to execute. This was certainly an illegal assumption of authority over the Attorney General, an assumption which the statute does not recognise. In the next place, this officer is sent into a State court to assist at the defence of a person on trial in that court for a violation of the State laws, and is directed to employ eminent and skilful counsel for him—to furnish him with evidence—to suggest a change of venue—and to take a writ of error to the Supreme Court of the United States, if the defence of the prisoner be overruled

by the State Court by the writ, it is General is to not to prose States, but clear that a torney Gen and injurio tible with h to bring the vernment in under prose of its citizen duced the C ly informed General of prosecute the Attorney G same place Attorney G to Mr. Critt counsel him not so to gal and carry the public by pose the do so; and Court of that outrig prosecuting I hold it to has been il business; t pense that have prom against law York have this interfe and interes brought a for the des gratuitous instruction suit cannot as illegal in first, as it who was se go; next, a interfering thirdly, as who have suit is decl I now pu quiry in the answer give and its com ture welfar I look u to Mr. Crit to Mr. Fox and I dec dated forty piece—an for Buncon constituent for the En

by the State court. If brought to the Supreme Court by this writ of error—a novel application of the writ, it must be admitted—then the Attorney General is to appear in this court for the prisoner, not to prosecute him in the name of the United States, but to dismiss the writ. Now, it is very clear that all this is foreign to the duty of the Attorney General—foreign to his office—disrespectful and injurious to the State of New York—incompatible with her judicial independence—and tending to bring the General Government and the State Government into collision. McLeod, a foreigner, is under prosecution in a State court for the murder of its citizen; the importance of the case has induced the Governor of the State, as he has officially informed its Legislature, to direct the Attorney General of the State to repair to the spot, and to prosecute the prisoner in person; and here is the Attorney General of the United States sent to the same place to defend the same person against the Attorney General of the State! The admonition to Mr. Crittenden, that he was not desired to act as counsel himself, was an admission that he ought not so to act—that all he was doing was illegal and improper—and that he should not carry the impropriety so far as to make it public by making a speech. He was to oppose the State without publicly appearing to do so; and, as for his duty in the Supreme Court of the United States, he was to violate that outright, by acting for the accused, instead of prosecuting for the United States! From all this I hold it to be clear, that our Attorney General has been illegally and improperly employed in this business; that all that he has done, and all the expense that he has incurred, and the fee he may have promised, are not only without law but against law; and that the rights of the State of New York have not only been invaded and infringed in this interference in a criminal trial, but that the rights and interests of the owners of the Caroline, who have brought a civil action against McLeod for damages for the destruction of their property, have been also gratuitously assailed in that part of the Secretary's instructions in which he declares that such civil suit cannot be maintained. I consider the mission as illegal in itself, and involving a triple illegality, *first*, as it concerns the Attorney General himself, who was sent to a place where he had no right to go; *next*, as it concerns the State of New York, as interfering with her administration of justice; and, *thirdly*, as it concerns the owners of the Caroline, who have sued McLeod for damages, and whose suit is declared to be unmaintainable.

I now proceed, Mr. President, to the main inquiry in this case, *the correctness and propriety of the answer given by our Secretary of State to Mr. Fox, and its compatibility with the honor, dignity, and future welfare of this Republic.*

I look upon the "instructions" which were given to Mr. Crittenden, and a copy of which were sent to Mr. Fox, as being THE ANSWER to that Minister; and I deem the letter entitled an answer, and dated forty days afterwards, as being a mere after-piece—an article for home consumption—a speech for Buncombe, as we say of our addresses to our constituents—a pleading intended for us, and not for the English, and wholly designed to excuse and

defend the real answer so long before, and so promptly given. I will give some attention to this, so called, letter, before I quit the case; but for the present my business is with the "instructions," a copy of which being delivered to Mr. Fox, was THE ANSWER to his DEMAND; and as such was transmitted to the British Government, and quoted in the House of Commons as being entirely satisfactory. This quotation took place on the 6th day of May, several days before the, so called, letter of the 24th of April could possibly have reached London. Lord John Russell, in answer to a question from Mr. Hume, referred to these instructions as being satisfactory, and silenced all further inquiry about the affair, by showing that they had all they wanted.

I hold these instructions to have been erroneous, in point of national law, derogatory to us in point of national character, and tending to the future degradation and injury of this Republic.

That the Secretary has mistaken the law of the case in consenting to the release of McLeod is persuasively shown by referring to the opinions of the two Houses of Congress in January last. Their opinions were then unanimous in favor of Mr. Forsyth's answer; and that answer was a peremptory refusal either to admit that McLeod ought to be released, or to interfere in his behalf with the courts of New York. The reasons urged by Mr. Fox in his letter to Mr. Forsyth for making the demand, were precisely the same with those subsequently given in the letter to Mr. Webster. The only difference in the two demands was in the formality of the latter, being under instructions from his Government, and in the threat which it contained. In other respects the two demands were the same; so that, at the outset of this inquiry, we have the opinions of the Secretary of State, the Attorney General, and the body of their friends in the two Houses of Congress to plead against themselves.

I next refer to the arguments which have been used by my friends who have preceded me, especially the opening speech of the Senator from Pennsylvania, [Mr. BUCHANAN,] and his pertinent and conclusive quotation from Vattel. The whole argument was close and pointed; and the quotation was absolutely irresistible. It was in these words:

"However, as it is impossible for the best regulated State, or for the most vigilant and absolute sovereign to model at his pleasure all the actions of his subjects, and to confine them on every occasion to the most exact obedience, it would be unjust to impute to the nation or the sovereign every fault committed by the citizens. We ought not, then, to say, in general, that we have received an injury from a nation, because we have received it from one of its members.

"But if a nation or its chief approves and ratifies the act of the individual, it then becomes a public concern, and the injured party is then to consider the nation as the real author of the injury, of which the citizen was, perhaps, only the instrument.

"If the offended State has in her power the individual who has done the injury, she may, without scruple, bring him to justice, and punish him. If he has escaped, and returned to his own country, she ought to apply to his sovereign to have justice done in the case."

This is the case before us. The malefactor is taken, and is in the hands of justice. His imputed crime is murder, arson and robbery. His Government, by assuming his crime, cannot absolve his guilt, nor defeat our right to try and punish him according to law. The assumption of his act only adds to the number of the culpable, and gives u

an additional offender to deal with them, if we choose. We may proceed against one or both; but to give up the individual when we have him, without redress from the nation, which justifies him, is to throw away the advantage which chance or fortune has put into our hands, and to make a virtual, if not actual surrender, of all claim to redress whatsoever.

The law of nations is clear, and the law of the patriot heart is equally clear. The case needs no book, no more than the hanging of Arbuthnot and Ambrister required the justification of books when General Jackson was in the hammocks and marshes of Florida. A band of foreign volunteers, without knowing what they were going to do, but ready to follow their fire leader to the devil, steal across a boundary river in the night, attack unarmed people asleep upon the soil, and under the flag of their country; give no quarter—make no prisoners—distinguish not between young and old—innocent or guilty—kill all—add fire to the sword—send the vessel and its contents over the falls in flames—and run back under cover of the same darkness which has concealed their approach. All this in time of peace. And then to call this an act of war, for which the perpetrators are not amenable, and for which redress must be had by fighting, or negotiating with the nation to which they belong. This is absurd. It is futile and ridiculous. Common sense condemns it. The heart condemns it. Jackson's example in Florida condemns it; and we should render ourselves contemptible if we took any such weak and puerile course.

Mr. Fox no where says this act was done by the sovereign's command. He shows, in fact, that it was not so done; and we know that it was not. It was the act of volunteers, unknown to the British Government until it was over, and unassumed by them for three years after it occurred. The act occurred in December, 1837; our minister, Mr. Stevenson, demanded redress for it in the spring of 1838. The British Government did not then assume it, nor did they assume it at all until McLeod was caught. Then, for the first time, they assume and justify, and evidently for the mere purpose of extricating McLeod. The assumption is void. Governments cannot assume the crimes of individuals. It is only as a military enterprise that this offence can be assumed; and we know this affair was no such enterprise, and is not even represented as such by the British minister. He calls it a "transaction." Three times in one paragraph he calls it a "transaction;" and whoever heard of a fight, or a battle, being characterized as a transaction? We apply the term to an affair of business, but never to a military operation. How can we have a military operation without war? without the knowledge of the sovereign? without the forms and preliminaries which the laws of nations exact? This was no military enterprise in form, or in substance. It was no attack upon a fort, or a ship of war, or a body of troops. It was no attack of soldiers upon soldiers, but of assassins upon the sleeping and the defenceless. Our American defenders of this act go beyond the British in exalting it into a military enterprise. They take different ground, and higher ground, than the Bri-

tish, in setting up that defence; and are just as wrong now as they were in the case of Arbuthnot and Ambrister.

Incorrect in point of national law, I hold these instructions to have been derogatory to us in point of national character, and given with most precipitate haste when they should not have been given at all. They were given under a formal, deliberate, official threat from the minister; and a thousand unofficial threats from high and respectable sources. The minister says:

"But, be that as it may, her Majesty's Government formally demand, upon the grounds already stated, the immediate release of Mr. McLeod; and her Majesty's Government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand."

Nothing could be more precise and formal than this demand—nothing more significant and palpable than this menace. It is such as should have prevented any answer—such as should have suspended diplomatic intercourse—until it was withdrawn. Instead of that, a most sudden and precipitate answer is given; and one that grants all that the British demanded, and more too; and that without asking any thing from them. It is given with a haste which seems to preclude the possibility of regular deliberation, cabinet council, and official form. The letter of Mr. Fox bears date the 12th of March, which was Friday, and may have been delivered in office hours of that day. The instruction to Mr. Crittenden was delivered on the 15th of March, which was Monday, and a copy delivered to Mr. Fox. This was the answer to the demand and the threat; and thus the answer was given in two days; for Sunday, as the lawyers call it, is *dies non*; that is to say, no day for business; and it is hardly to be presumed that an Administration which seems to be returning to the Church and State times of Queen Anne, had the office of the Department of State open, and the clerks at their desks on Sunday, instead of being in their pews at church. The answer, then, was given in two days; and this incontinent haste to comply with a threat contrasts wonderfully with the delay—the forty days' delay—before the letter was written which was intended for home consumption; and which, doubtless, was considered as written in good time, if written in time to be shown to Congress at this extra session.

Sir, I hold it to have been derogatory to our national character to have given any answer at all, much less the one that was given, while a threat was hanging over our heads. What must be the effect of yielding to demands under such circumstances? Certainly degradation—national degradation—and an encouragement to Great Britain to continue her aggressive course upon us. That nation is pressing us in the Northeast and Northwest; she is searching our ships on the coast of Africa; she gives liberty to our slaves wrecked on her islands in their transit from one of our ports to another; she nurtures in London the societies which produced the San Domingo insurrection, and which are preparing a similar insurrection for us; and she is the mistress of subjects who hold immense debts against our States, and for the payment of which the national guarantee, or the public lands, are wanted. She has many points of ag-

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gressive contact upon us; and what is the effect of this tame submission—this abject surrender of McLeod, without a word of redress for the affair of the Caroline, and under a public threat—what is the effect of this but to encourage her to press us and threaten us on every other point? It must increase her arrogance, and encourage her encroachments, and induce her to go on until submission to further outrage becomes impossible, and war results from the cowardice which courage would have prevented. On this head the history of many nations is full of impressive lessons, and none more so than that of Great Britain. It is a nation of brave people; but they have sometimes had ministers who were not brave, and whose timidity has ended in involving their country in all the calamities of war, after subjecting it to all the disgrace of pusillanimous submission to foreign insult. The administration of Sir Robert Walpole, long cowardly, and corrupt—tyrannical at home and cringing abroad—was a signal instance of this, and, as a warning to ourselves, I will read a passage from English history to show his conduct, and the consequences of it. I read from Smollet, and from his account of the Spanish depredations, and insults upon English subjects, which were continued the whole term of Walpole's administration, and ended in bringing on the universal war which raged throughout Europe, Asia, Africa, and America, and cost the English people so much blood and treasure. The historian says:

"The merchants of England loudly complained of these outrages; the nation was fired with resentment, and cried for vengeance; but the minister appeared cold, phlegmatic, and timorous. He knew that a war would involve him in such difficulties as must of necessity endanger his administration. The treasure which he now employed for domestic purposes must in that case be expended in military armaments; the wheels of that machine on which he had raised his influence would no longer move; the opposition would of consequence gain ground, and the imposition of fresh taxes, necessary for the maintenance of the war, would fill up the measure of popular resentment against his person and ministry. Moved by these considerations, he industriously endeavored to avoid a rupture, and to obtain some sort of satisfaction by dint of memorials and negotiations, in which he betrayed his own fears to such a degree as animated the Spaniards to persist in their depredations, and encouraged the court of Madrid to disregard the remonstrances of the British Ambassador."

Such is the picture of Walpole's foreign policy; and how close is the copy we are now presenting of it! Under the scourge of Spanish outrage, he was cold, phlegmatic, and timorous; and such is the conduct of our Secretary under British outrage. He wanted the public treasure for party purposes, and neglected the public defences: our Ministry want the public lands and the public money for *douceurs* to the States, and leave the Union without forts and ships. Walpole sought some sort of satisfaction by dint of negotiation; our Minister does the same. The British Minister at Madrid was paralyzed by the timidity of the Cabinet at home; so is ours paralyzed at London by our submission to Mr. Fox here. The result of the whole was, accumulated outrage, coalitions against England, universal war, the disgrace of the Minister, and the elevation of the man to the highest place in his country, and to the highest pinnacle of glory, whom Walpole had dismissed from the lowest place in the British army—that of cornet of horse—for the political offence of voting against him. The elder William Pitt—the dismissed cornet—conducted with glory and success the war which the timidity of Walpole

begat; and, that the smallest circumstances might not be wanting to the completeness of the parallel, our prime minister here has commenced his career with issuing an order for treating our military and naval officers as Pitt was treated by Walpole, and for the same identical cause.

Sir, I consider the instructions to Mr. Crittenden as most unfortunate and deplorable. They have sunk the national character in the eyes of England and of Europe. They have lost us the respect which we gained by the late war, and by the glorious administration of Jackson. They bring us into contempt, and encourage the haughty British to push us to extremities. We shall feel the effect of this deplorable diplomacy in our impending controversies with that people; and happy and fortunate it will be for us if, by correcting our error, retracing our steps, recovering our mainly attitude, discarding our distribution schemes, and preparing for war, we shall be able thereby to prevent war, and to preserve our rights.

I have never believed our English difficulties free from danger. I have not spoken upon the Northeastern question but the Senator from that State who sits on my right (looking in at Senator WILLIAMS) knows my opinion. He knows that I have long believed that nothing could save the rights of Maine but the *ear countenance of our Government*. Preparation for war might prevent war, and save the rights of the State. This has been my opinion; and to that point have all my labors tended. I have avoided speeches; I have opposed all distributions of land and money; I have gone for ships, forts and cannon—the *ultima ratio* of Republics as well as kings. I go for them now, and declare it as my opinion that the only way to obtain our rights, and to avoid eventual war with England, is to abandon all schemes of distribution, and to convert our public lands and surplus revenue, when we have it, into cannon, ships, and forts.

I read and pressed on the instructions to Mr. Crittenden—prostrate and defenceless there—the gentlemen on the other side take refuge under the letter to Mr. Fox, and celebrate the harmony of its periods, and the beauty of its composition. I grant its merit in these particulars. I admit the beauty of the style, though attenuated into gossamer thinness and Hippuritan weakness. I agree that the Secretary writes well. I admit his ability even to compose a prettier letter in less than forty days. But what has all this to do with the question of right and wrong—of honor and shame—of war and peace—with a foreign Government? In a contest of rhetoric, it would indeed be important; but in the contests of nations it dwindles into insignificance. The statesman wants knowledge, firmness, patriotism, and invincible adherence to the rights, honor, and interests of his country. These are the characteristics of the statesman; and tried by these tests, what becomes of this letter, so economically dwelt upon here? Its knowledge is shown by a mistake of the law of nations—its firmness, by yielding to a threat—its patriotism, by taking the part of foreigners—its adherence to the honor, rights and interests of our own country, by surrendering McLeod without receiving, or even demanding, one word of address or apology for the outrage upon the Caroline!

The letter, besides its fatal concessions, is deficient in many tone—in American feeling—in nerve—in force—in resentment of injurious imputations—and in enforcement of our just claims to redress for blood spilt, territory invaded, and *£* insulted.

The whole spirit of the letter is feeble and deprecatory. It does not repel, but begs off. It does not reprimand, but defends. It does not resent insult—not even the audacious threat—which is never once complained of, nor even alluded to.

This letter is every way an unfortunate production. It does not even show the expense and trouble we took to prevent our citizens from crossing the line and joining the Canadian insurgents. It does not show the expense we were at in raising a new regiment of infantry expressly for that service, (several voices said yes, yes, it mentions that.) Good, let it be credited accordingly. But it does not mention the appropriation of \$650,000 made at one time for that object: it does not mention the numerous calls upon the militia authorities and the civil authorities along the line to assist in restraining our people; it does not mention the arrests of persons, and seizures of arms, which we made; it does not mention the prosecutions which we instituted; it does not show that for two years we were at great expense and trouble to restrain our people; and that this expense and trouble was brought upon by the excitement produced by the affair of the Caroline. The British brought us an immense expense by that affair, for which they tender us no thanks, and the Secretary fails to remind them. The letter does not repel, with the indignant energy which the declaration required, that we had "permitted" our citizens to arm and join the insurgents. It repels it, to be sure, but too feebly and gently, and it omits altogether what should never be lost sight of in this case, that the British have taken great vengeance on our people for their rashness in joining this revolt. Great numbers of them were killed in action; many were hanged; and many were transported to the extremities of the world—in Van Dieman's land, under the antarctic circle—where they pine out a miserable existence, far, far, and forever removed from removed from kindred, home and friends.

The faults of the letter are fundamental and radical—such as no beauty of composition, no tropes and figures, no flowers of rhetoric, can balance or gloss over. The objections go to its spirit and substance—to errors of fact and law—to its tameness and timidity—and to its total omission to demand redress from the British Government for the outrage on the *Caroline*, which that Government has now assumed. She has now assumed that outrage for the first time—assumed it after three years of silence; and, in the assumption, offers not one word of apology or of consolation to our wounded feelings. She claps her arms akimbo, and avows the offence; and our Secretary, in his long and beautiful letter, finds no place to insert a demand for this assumed outrage. He gives up the subject, and demands nothing of the sovereign. He lets go the servant, and does not lay hold of the master. This is a grievous omission. It is tantamount to a surrender of all claim for any redress of any kind. McLeod, the perpetrator, is given up; he is given up without conditions. The English Government assume his offence—demand his release—offer us no satisfaction, and we give him up, and ask no satisfaction! The letter demands nothing—literally nothing; and in that respect degrades us as much as the surrender upon a threat had degraded us.

This is a most material point, and I mean to make it clear. I mean to show that the Secretary, in giving up the alleged instrument, has demanded nothing from the assuming superior; and this I will do him the justice to show, by reading from his own letter. I have examined it carefully, and can find but two places where the slightest approach is made, not even to a demand for redress, but to the suggestion of an intimation of a wish on our side ever to hear the name of the *Caroline* mentioned again. These two places are on the two concluding pages of the letter. If there are others, let gentlemen point them out, and they shall be read. The two paragraphs I discover are these:

"The undersigned trusts, that when Her Britannic Majesty's Government shall present the grounds, at length, on which they justify the local authorities, of Canada, in attacking and destroying the *'Caroline'*, they will consider that the laws of the United States are such as the undersigned has now represented them, and that the Government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws."

"The President instructs the undersigned to say, in conclusion, that he confidently trusts that this, and all other questions of difference between the two Governments, will be treated by both in the full exercise of such a spirit of candor, justice, and mutual respect, as shall give assurance of the long continuance of peace between the two countries."

This is all that I can see that looks to the possible contingency of any future allusion to the case of the *Caroline*. Certainly nothing could be a more complete abandonment of our claim to redress. The first paragraph goes no further than to "trust" that the grounds may be presented which "justify"—a strange word in such a case—the local authorities in attacking and destroying this vessel; and the second buries it all up, by deferring it to the general and peaceful settlement of all other questions and differences between the two countries. Certainly this is a farewell salutation to the whole affair. It is the parting word, and is evidently so understood by the British Ministry. They have taken no notice of this beautiful letter; they have returned no answer to it, nor even acknowledged its receipt. The Ministry, the Parliament, and the Press in England, profess themselves satisfied. They cease to speak of the affair; and the miserable *Caroline*, plunging in flames over the frightful cataract, the living and the dead on board, is treated as a gone-by procession, which has lost its interest forever.

It is vain for gentlemen to point to the paragraph, so powerfully drawn, which points the destruction of this vessel, and the slaughter of the innocent as well as the guilty asleep on board of her. That paragraph aggravates the demerit of the letter; for, after so well showing the enormity of the wrong, and our just title to redress, it abandons the case without requiring the slightest atonement!

But gentlemen point to a phrase in the letter, and quote it with triumph, as showing courage and fight in our Secretary. They point to the phrase, "*bloody and exasperated war*," and consider this phrase as a cure for every defect. But how did Mr. Fox consider it? as a thing to quicken him, or the British Government? as an inducement or stimulus to hasten an atonement for the outrage which they had assumed? Not at all. Far from it. Mr. Fox did not take fright, and answer in two days, nor in forty; nor has he answered yet; nor will he ever answer while such gentle epistles are written to him. The "*bloody and exasperated war*," which is here shadowed forth, is too feebly and pointlessly exhibited to make any impression on the minds of the English and their minister. Besides the capital defect of not stating on what fourth day of July the aforesaid "*bloody and exasperated war*" will chance to be-

gin, it happens, also, to be totally defective in not stating the contingency on which it was to happen. It is not said that, if you do not make redress for the outrage you have assumed—if we do not get satisfaction for this wrong—or, if you ever do so again—then and in that case this war of blood and rage will break out. Nothing of this, nor any thing pointed or tangible, is said in the letter, but only a vague intimation that such occurrences may lead to this war. The little effect which it had upon the mind of the minister, and his Government, is shown, by the silent contempt with which they have treated it. This famous letter was written on the 23rd day of April; this is June, and to this day no answer has been given to it! Its receipt has not even been acknowledged!

Unfortunate as this boasted letter is in so many respects, it has a further sin to answer for, and that is its place, or order—its collocation—in the printed document which is laid before us, and in its assumption to enclose the "*instructions*" to Mr. Fox which had been enclosed to him forty days before. The letter is printed before the "*instructions*," though written forty days after them, and purports in "*enclose*" what had been so long before delivered. To be sure all the papers are correctly dated; and the close observer may perceive the order they ought to take, and that, in fact, they come to us wrong end foremost. There may be some scenic contrivance—some stage trick in this; but it is according to the new tactics—the tactics which put the car before the horse—and repeals our financial system before another is established.

Sir, the case of McLeod is not isolated; it is not a solitary aton, standing by itself; but it is a feature in a large picture—a link in a long chain. It connects itself with all the aggressive conduct of England towards this country; her encroachments on the State of Maine—her occupation of our territory on the Oregon—her insolence in searching our vessels on the coast of Africa—the confiscation of our slaves, wrecked on her islands, in their transit from one port of our country to another—her hatching in London for our Southern States what was hatched there above forty years ago for San Domingo, the insurrection of our slaves and the destruction of their owners—and the various unofficial intimations that the Union is bound for the debts of the States. The McLeod case mixes itself with the whole of these; and the success which has attended British threats in his case may bring us threats in all cases, and blows to back them—such blows as the towns of Syria lately received from the war steamers of Stopford Napier.

The British are a great people—a wonderful people—and can perform as well as threaten. Occupying an island no larger than one of our principal States, they have taken possession of the commanding points in the four quarters of the globe, and predominate over an extent of land and water compared to which the greatest of empires—that of Alexander—that of the Romans—that of the Caliphs—was nothing but a digit. War is to them a distant occupation. Something like piracy on a vast scale, in which their fleets go forth to capture and destroy, and to return loaded with the spoils of plundered nations. Since the time of William the Conqueror, no hostile force has trod their soil; and, safe thus far from the ravages of war at home, they are the more ready to engage in ravages abroad. To strike—to crush—to plunder—to terrify—and to make peace—is their policy and their practice; and they look upon us, with our rich towns and defenceless coasts, as a fit subject for these compendious tactics. We all deprecate a war with that people—none deprecate it more than I do; but we shall never prevent it by truckling to their threats, and squandering the money in *douceurs* to the States which ought to go to the common defence. The result of our first war with this people, shows what we could do, when only the fifth of our present numbers, in a seven years' contest. The result of the second one shows that, at the end of two years, we can learn to fight—we can get our hands in, and begin to conquer—and, in the event of a third war, we to the statesman whose timid tongue shall cry for peace at the end of two years! We shall then just be getting ready to conquer; and two or three years more may give us the victories which will secure to us peace in all time to come.

The Americans are among the bravest people of the earth, and there is nothing which mortals dare which they will not attempt when bravely led. Their war history is yet in the womb of time. Peace is their policy; but, if much enforced, they shrink not from war. Defence is their first object; but they know how to return visits as well as to receive them. Of all the nations of the earth, the Americans are the people to land, on the coasts of England and Ireland. The visits of kindred have, sympathies and affections which books and laws cannot control.

As an American citizen, anxious for the peace and prosperity of my country, I do entreat this Administration to retrace its steps—to change its policy—to give up its plans of distribution, and of a paper money currency, to fail in the first year of a war—and to give us ships, forts, and cannon, and the hard money currency which our Constitution guarantees, and which the history of the world shows to be the only safe currency for individuals, or for nations, in peace or in war.



