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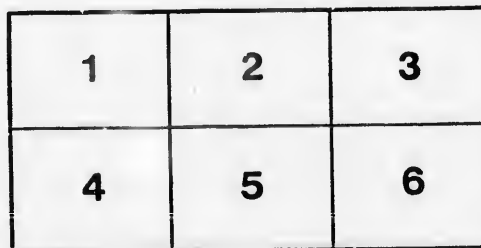
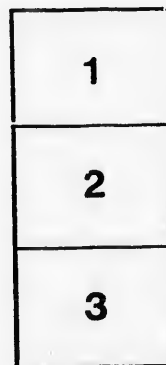
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SPEECH

OF THE

HON. AARON V. BROWN, OF TENNESSEE,

ON THE

CORRESPONDENCE OF MR. WEBSTER

WITH THE

BRITISH MINISTER,

IN RELATION

TO THE SURRENDER OF ALEXANDER MCLEOD:

DELIVERED IN THE

HOUSE OF REPRESENTATIVES, JULY 9 AND 10, 1841.

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WASHINGTON:  
PRINTED BY BLAIR AND RIVES.

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## SPEECH OF MR. BROWN, OF TENNESSEE,

ON THE

*Correspondence of Mr. Webster with the British Minister, in relation to the surrender of Alexander McLeod. Delivered in the House of Representatives, July 9th and 10th, 1841.*

The following resolution being under consideration in the Committee of the Whole on the state of the Union :

*Resolved*, That the President of the United States be requested to inform this House, if not incompatible with the public service, whether any officer of the army, or the Attorney General of the United States, has, since the 4th of March last, been directed to visit the State of New York for any purpose connected with the imprisonment or trial of Alexander McLeod; and whether, by any Executive measures or correspondence, the British Government has been given to understand that Mr. McLeod will be released or surrendered; and, if so, to communicate to this House copies of the instructions to, and report of, such officer.

Mr. A. V. BROWN, of Tennessee, addressed the House as follows :

Mr. SPEAKER: I offer no apology for further discussion of this subject. It has not been discussed enough yet. It was not discussed enough last winter, when the British Government *half* confessed that she had invaded our soil, burnt our property, and murdered our people. She *so nearly* confessed it, that when her minister's letter was received, containing the impudent avowal "that the destruction of the *Caroline* was the public act of persons in her Majesty's service, obeying the orders of their superior authorities," this hall rung with indignation from one side of it to the other.

The *now* chairman of the Ways and Means, and the present Postmaster General, both coming from the region of country where this outrage was perpetrated, made the most animated appeals to our sympathies and patriotism.

But the cold suggestion was made then, as now, that the negotiation was yet pending, and we must beware how we aroused the sleeping lion of English power. Soon afterward, the Committee on Foreign Relations submitted a report, rather spirited in its tone, commenting with some slight severity on British aggression and ambition; when we were again admonished of her fleets and armies, and the ease with which she could reduce our towns and cities to ashes.

These admonitions were effectual. Debate subsided ; the first flashes of our indignation died away ; and we adjourned, half regretting that we had *dared* to debate the subject at all.

Sir, Lord Palmerston observed all and read all that was uttered in this hall ; and concluding, from the too cautious temper of that debate, that Mr. Forsyth would not be sustained in the lofty stand he had taken, determined at once to make a *peremptory* demand upon us—to appeal to our *fears* “of the serious consequences of a refusal.” I hope in God that no action of this House, on this resolution, will ever confirm his degrading estimate of its disposition and determination to resist all foreign aggression at every hazard.

It is time, high time, for us to speak out boldly, and without reserve. England's ministry have spoken the words of burning shame to the insulted honor of this country. One of her members of Parliament has even threatened to arm our slaves, and to excite all the Indian tribes against us. And shall an American Congress be *afraid* to speak—afraid to call even for necessary information—lest, peradventure, it should embarrass our future negotiations ? Sir, I am free to declare that I desire to embarrass all such negotiations as have been lately going on. Were I the American Executive, my Secretary of State should never write another line in the way of negotiation, until England withdrew that degrading threat, which is yet hanging over my country, and which Mr. Webster has never had the *heart* to repel—all American as that heart is, according to the gentleman from Virginia, [Mr. WISE.]

But, sir, can this call, by any possibility, embarrass future negotiation ? It cannot, for the resolution on its face confers on the President a boundless discretion in giving or withholding the information. Besides, a large portion of the call relates only to the mission of two of our own public officers to the State of New York, with whose instructions England should never have been made acquainted. But, instead of this, it is highly probable that the British Government knows all about them, whilst our own countrymen are profoundly ignorant on the subject.

This mission was so extraordinary—so unlike any thing that had ever occurred under any former Administration, that *curiosity* alone might prompt us to inquire why a brave and gallant general of our armies had been sent off four or five hundred miles—not to meet and battle (as he had often and gloriously done) the enemies of his country, but, strange to tell, to attend to a law-suit in court. Only think of it, sir ; an old soldier, covered with his scars and his honors, sent out to assist the law officer of the Government to argue a demurrer to an indictment, or to file a plea to the jurisdiction of a county court. Heavens ! as the eloquent gentleman from Ken-

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tucky [Mr. MARSHALL] would say, "what an immortal petrefaction" of human folly!

But, sir, to be serious. Was General Scott despatched to New York for any purpose connected with the trial of McLeod? And, if so, what could have been that purpose? Was it to effect a release by the *sword*, if the Attorney General should fail to procure it by the *purse*? Such a purpose is incredible. What then? Why, the most probable conjecture is, that Mr. Webster had learned, from some source or other, that McLeod was to be liberated at all events, and at every hazard, by the British authorities in Canada; that, in the event of a conviction, our soil was to be *again* invaded, our jail at Lockport to be pulled down or burnt like the Caroline; and, if necessary, to shoot and sabre and murder our people, as they had done before!

Sir, I want to know all about this military expedition; and, if my conjecture should prove correct, then I want to know why Mr. Webster should feel so much sympathy for this English subject, who inhumanly boasted that his sword was yet red with the blood of an American citizen,—why he should send him testimony and counsel, and render him every assistance in his power to escape justice and to elude the law. Surely Mr. Webster was under no obligation to the British nation so to volunteer his services in behalf of one of her subjects. That would make him more like a British consul than an American Secretary of State. From that hour (if not before) when Mr. Fox declared the *approval* of the burning of the Caroline, and the murder of her crew, by his Government, Mr. Webster should have said: "Then go and defend McLeod yourself; employ his counsel with your own or your nation's money; collect his testimony for him yourself; henceforth and forever I leave him to his fate, to answer to the insulted and violated laws of New York in the best manner he may." The more especially should he have said and acted in this manner, after those threats which I suppose to have given rise to General Scott's expedition to New York.

But, sir, this whole mission has been marked, throughout, not more by the most morbid and misapplied sympathy, than by the novelty and inconsistency of the duties which it imposed on the Attorney General. It is the duty of that officer to *prosecute*, not to *defend*, criminals; to give counsel to our President, and to the heads of departments—not to traverse the country for the release of foreign felons, who, at the dead hour of midnight, by boats propelled by muffled oars, invade our territory, burn our property, and imbue their hands in better blood than ever flowed in English veins.

Such are the duties of the Attorney General, as declared by the statute of 1789. What duties were assigned to him in this degrading mission—

degrading to him who sent, and to him who was sent? You may find them in page 25 of document No. 1.

"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.

"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 is 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."

You perceive, sir, that he was not to go as *public*, but as *secret* counsel—not to plead for McLeod *himself*, but to see that he had *others*, "skilful and eminent," to do so; that he was to furnish him with testimony; and, above all, in case of conviction; that it was the *wish* of the *Government* that the case should be taken to the Supreme Court of the United States; that the prisoner's counsel was to be *told* that such was the wish of the Government.

The defendant, it was supposed, might not feel sufficient anxiety to save his neck from the halter by appealing to a higher tribunal, and must, therefore, be encouraged to do so by the assurance that the Government *wished* him to do so.

Mr. Attorney General *is to signify* to him that he had better appeal than die!

Mr. Speaker, I pause to ask if, after this, you can believe that wonders will ever cease? At all events, can you believe they are likely to cease during this life-preserving, felon-saving *branch* of this Administration? I say nothing of its head, who had come in too unexpectedly, and was surrounded by too many perplexities at that period, to be presumed to have given much attention to this subject; but I speak emphatically of this *branch* of the Administration.

Mr. Speaker, I wish now to call your attention to the remaining clause of this resolution, to wit: "whether the British Government has been given to understand that McLeod will be released or surrendered."

It is probable that the President can give us but little more than the information contained in his message. I shall, therefore, under that supposition, submit my views on the merits of the McLeod case, and the course pursued by the Secretary of State in the correspondence, as it now stands.

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To understand the merits of this case, and to judge of the propriety or impropriety of the course pursued by Mr. Webster in it, we must have a clear and distinct understanding of the facts. For these, I refer you to the speech of the honorable chairman of the Ways and Means at the last session; to the statement of the case made by Mr. Webster himself; and, lastly, to a condensed and nervous statement of them in the other end of the Capitol, which has never been denied or contradicted *there* or on this floor.

"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 is 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 draw 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 Yan-*

kees,' (to use his own words,) with his own hands."--*Mr. Benton's speech in Senate United States.*

Now, sir, on these facts, which it warms one's American blood to recite, can this band of merciless desperadoes be liable to punishment under the laws of New York, where their crimes were perpetrated? To my mind, after the best examination I have been able to give to the subject, there can be but one response. McLeod, one of the perpetrators, is answerable, unless he can show that it was a public military expedition, set on foot by the proper authorities in Canada, with or without a previous declaration of war against this country, commanding the specific things to be done for which he now stands indicted in the State of New York. I repeat—commanding the specific things to be done for which he is indicted.

In time of open public war, such *authority* would be *presumed*. The courts would look to the *public acts, proclamations, declarations of war*, and other proceedings of notoriety; and out of these would find immunity to the individuals engaged, whilst the *Government* would retaliate on the enemy by like incursions into their territory. But in time of *profound peace*, with all subsisting treaty stipulations of amity in full force, no such *presumptions* can be resorted to. *Express, positive, and unequivocal* commands from *competent* authority are all that can justify him. Were such commands given? The whole case turns upon *that fact*. The case will turn on that fact in the courts of New York. The prisoner must come forward with the orders of Sir Francis Head, I believe then Governor General of Canada. If not direct from him, he must show order from some military commander who issued them, and who received *his* orders from the supreme Colonial Government. Further back *than that* it would not be necessary, as I conceive, to trace the orders. If such orders covered and embraced the specific act for which he was indicted, the courts of New York *will* and ought to discharge him. But if the orders were general, "to break up the establishment at Navy Island," that would not do; or if they were "to destroy any vessel conveying insurgents to or from the island," that would not do. If they were "to take any steps, and to do any acts, which might be necessary for the defence of her Majesty's territory, or for the protection of her Majesty's subjects," such orders would not do. They would not justify an *invasion* of our *territory*, nor the burning of a vessel lying peaceably moored to our own shores, with no military stores, and with no troops for transportation. *No prior* use of the boat and no prior conduct of her crew could justify the attack, because not essential "to the defence of British territory nor of British subjects." It might be an act of *revenge* for the past, but it could not be necessary for protection in future.

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In any event, *capture* without *burning*, capture without the *murder* of her crew, would surely have been all that could have been necessary. But, sir, when only ordered to defend British territory, they come at the dead hour of midnight and *invade* American soil; when only ordered to protect British subjects, they shoot, and stab, and murder American citizens—instead, at most, of taking and towing the vessel over to the British side, and detaining her until the insurgents were expelled from the island, they tow her out to the middle of the river, set fire to her, and thus commit to the flames the remaining portion of her crew, sending them and the blazing wreck over the mighty falls of the Niagara. Sir, place yourself in that dark and bloody night, on the shore of that river, standing proudly as you would do on American ground. In the stillness of that night, listen to the landing of hostile soldiers on our shores, to the attack on one of our vessels; hear the groans of our dying countrymen: a moment after, look at that blazing sheet of fire, slowly moving on to the dreadful cataract, till at last it makes its awful leap on the floods below.

Sir, the waves of Niagara have extinguished the fires of that vessel—they have silenced forever the agonizing shrieks of her remaining crew; but the cry for vengeance still comes up from her deep and agitated bosom, in tones louder than the thunder of her own mighty cataract. I carry you back to that midnight scene—to the tramp of British soldiers; I point you to the dead bodies of your countrymen—to the blazing victim of the falls. Contemplating all these things, in the stillness of that night, can *your* heart find one throb of approbation to the cold, unfeeling diplomacy—to the tame and ready submission of the American Secretary of State?

Submission to what? I answer, 1st. To the impudent menace or threat of the British Government. Do you ask me what he should have done? I answer, that he should have stopped all negotiation at once—instantly to have stopped it—until that menace was withdrawn. I answer further, that the *least* he should have done would have been, the moment the British Government avowed her approbation of the act, he ought to have *retorted* her own language of *peremptory* demand of *satisfaction*, and to have flung back her own menace of the *serious consequences* of a refusal. This, sir, is the least he should have done on that proud and insulting occasion. What else should he have done? Answering at all, he should have said to Mr. Fox: Your avowal of this act by the British Government is *vague*, *prevaricating*, and *unsatisfactory*.

I ask your attention, and that of this House and nation, to the precise words of that avowal:

“The grounds on which the British Government make this demand upon the Government of the United States are these: That the transaction on

account of which Mr. 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."

These are the precise words of the British minister. It is fair to presume that they are the precise words of the orders of Colonel McNab, under whom McLeod was acting. Well, sir, suppose these *orders* to be before us now, or before the courts of New York on the trial: will such orders cover the case of McLeod? Will they justify the *burning* of the Caroline, the invasion of our territory, and the murder of our people? Surely not; *because these acts did not come within the scope of their orders or authority.* They were only authorized or ordered to do *such acts* as were necessary for the "defence of her territory, and the protection of her Majesty's subjects." The things done, and for which he stands indicted, were for none of these purposes; and they, therefore, stand without excuse or justification, because they *exceeded* their authority. When is it that *individuals*, by the law of nations, are exempted from municipal liability in such cases? It is only when the act done was by the *command* of the sovereign. Of course that command must *precede* the act, and must clearly and satisfactorily cover it. Sir, Vattel, nor Grotius, nor any other writer on the laws of nations, any where lays down the doctrine that *subsequent* approval, without previous *command*, would excuse the individual committing the crime. Such a doctrine would perish by its own absurdity. It is true that a subsequent *approval* may *also* involve the nation, and, in the language of the books, "make it a matter of *public* concern"—as it was, before that avowal, only one of *individual* concern. This, however, only adds another party to the controversy, without releasing the first. Hence it is said by Vattel, "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."

This case from Vattel is precisely the case of McLeod. He was, to say the best for him, but the servant, or agent, or soldier of the Canadian Government, ordered and sent to do one thing, to wit: to defend the British territory, and protect the British subjects; but exceeding his authority—going beyond his orders—he invaded our territory, burnt our property, and murdered our citizens. He fled back to his own country; and, if he had

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remained there, our only recourse would have been to demand him of the British Government. When demanded, if the British Government refused to surrender him, she would have made it a "public concern," and we might have looked to her for satisfaction for the *refusal*;—not for the original act of her subject, but for the *refusal*; and the measure of satisfaction for that refusal would justly be, indemnity for losses sustained by the original act. But if, before, or pending, or subsequent to such a demand, the individual returns within our jurisdiction, we may hold him responsible for his transgression of our laws, and punish him accordingly. When *that* is done, the original offence is atoned for. No double satisfaction for *that* can be demanded; but we should be still at liberty to proceed for the subsequent *refusal*, according to the circumstances of aggravation attending it.

But, sir, I repeat, that nothing short of a previous order to do the specific act complained of, given by competent authority, can save McLeod in the courts of New York. No subsequent approval of it by the British Government *can* do it. McLeod will find it so on his trial; and the American Secretary of State should have told the British Government so, and should have *demande*d the production of the original order, or a copy of it, so as to see precisely its extent and operation. And here is my highest objection to the conduct of our Secretary of State. He never had the fearlessness to say to England, "Show me your order to this man or his leader; show me that—its date, its every word—that my Government may see whether these crimes are yours or his. If yours, the courts of New York, in due season, will send him home unharmed and uninjured, whilst I will hold you instantly responsible for his conduct."

This is what Mr. Webster, in my humble opinion, should have said and done. What did he say and do? He affects to see no distinction between a prior order and a subsequent approval of the conduct of McLeod. *In fact*, he substitutes the latter for the former, and, with indecent haste, gives the British Government to understand that the claim of New York constituted *the only* difficulty in the way of an instant compliance with its demand. What more? Why he gives Mr. Fox a copy of his instructions to the Attorney General, and thereby informs him of the hasty and extraordinary means by which he was endeavoring to snatch McLeod out of the hands of New York, the only remaining obstacle to his surrender.

Sir, Mr. Fox saw at once that his threat had told—the British ministry saw the same thing—the British Parliament saw it—and they are all now waiting in full assurance that the heroes of Acre will have no opportunity to increase their laurels on the coast of America.

But, sir, they may be mistaken after all. There is but one thing can save him on his trial. If indeed he were absent from the scene of these

outrages—if indeed he was no member of that “public force,” he will and ought to be acquitted.

But the Supreme Court will require him, as Mr. Webster ought to have done, to produce the *order* under which the party acted. They will look closely to the extent of that order; and if that order was *exceeded*, he must die. No subsequent approval of the British Government can shield him—no oversight of the American Secretary can set aside the strict and impartial administration of justice. Die he must; and all the thunder of the British navy cannot frighten the American people from approving and applauding the sentence.

If such should be the fate of McLeod, there remains but one question to be considered—and that is, one of peace and of war. Will Great Britain feel bound and pledged to declare war against this country to avenge his death? Sir, England would never have thought of such a thing; but for the timid policy and unwise admissions of the Secretary of State. As it is, she may, and probably will, venture to appeal to that “*ultima ratio regum*,” and, sir, in the very declaration in which she appeals to arms, she will present the correspondence of our own Secretary to vindicate the act. She will spread it before all Europe as her justification, and will engrave it on the very banner under which she will march to the conflict.

Mr. Speaker, it is to avert the horrors of war that this apparent severity of remark on the course of the Secretary has been indulged in; and, if it must come, we wish to rescue the country from the imputation of having induced it, by having too tamely surrendered the rights of our citizens.

It is not too late yet for Mr. Webster to review the fatal admissions he has made, and to place this correspondence on more elevated and more defensible foundation. If no exhortation on this floor can prevail with him, let him learn it from Lord Palmerston himself. Let him learn it in the reply of that nobleman to Lord Stanley in the British Parliament on the 9th of February, 1841. On that occasion he stated:

“With regard to the ground taken by Mr. Forsyth, in reply to Mr. Fox, I think *it right* to state that the American Government *undoubtedly* might have considered this transaction either as a transaction to be dealt with between the two Governments, by demands for redress by one to be granted or refused by the other, and dealt with accordingly: or it might have been considered, as the British authorities consider proceedings between American citizens on the British side of the border,—*as matter to be dealt with by the local authorities.*”

“But the American Government *chose* the former course, by treating this matter as one to be decided between the two Governments; and *this is the ground* on which they are entitled to demand redress of the British Gov-



ernment for the act of its subjects; and from *that ground* they cannot be *permitted* to recede."

Sir, here is an admission of our original right to seize and punish McLeod, infinitely stronger than is any where asserted by Mr. Webster;—an admission but little weakened by the sophistry which seeks to show that this original right had been lost by an appeal to the British Government for redress. That redress has never been granted—nay, it has not even been promised; and, therefore, upon every known principle this Government stands remitted to her original right to punish McLeod whenever she can get hold upon him. She has him now. She recurs to that admitted original right, notwithstanding its surrender by Mr. Webster.

I wish now to refer to another speech of Lord Palmerston, in reply to Mr. Hume, in the same debate. He said:

"With regard to Mr. Forsyth's letter, I beg leave to say that the principle stands thus: In the case of the American citizens engaged in invading Canada, the American Government disavows the acts of those citizens, and states that the British authorities might deal with them as they pleased, and that they were persons who were not in any degree entitled to the protection of the United States. But in the other case they treated the affair of the *Caroline* as one to be considered as that of the Government, and not to be left on the responsibility of individuals. *Until*, therefore, the British Government *disowned* those persons, as the American Government disavowed their citizens in the other case, they would have no right to *change their ground* on the question."

Now, sir, observe the position taken in this last extract by Lord Palmerston. Until the British Government *disown* the persons who made the attack on the *Caroline*, they were not to be treated like the British authorities treated the Americans taken on the Canada side. And how was that? By making them responsible to the local authorities. And why not treat them on both sides alike? Because we have not *disowned* our people, say they, as you have done yours. But if you have not *disowned* them, have you ever *owned* them, or acknowledged their acts to be yours? No, never.

For two years we demanded of the British Government to say whether it did or did not disown these persons; but she utterly failed during all that time to say whether she did or not. In the mean time, whilst she is standing mute and will not utter a single word *either way*, McLeod returns to the United States, impudently brags of his exploits in the affair, is arrested, and confined for trial. Up to this time, we could not get England to say a word on the subject; but *now* she comes very suddenly to her speech. One of her felon subjects is about to get the rope around his neck, and she speaks up at once with full volubility. Is she entitled to her de-

mand? Is she entitled to take *our* people on her side of the border, and hang them up at the yard-arm or shoot them like dogs; whilst *her* people, taken on our side, with their hands yet reeking with the blood of our fellow-citizens, may stalk, and strut, and vapor through our land, with utter impunity?

Sir, Mr. Webster virtually says all this may be done. He virtually surrenders the rights and privileges of our border citizens, and lays them exposed to every marauding expedition that may be set on foot against them in Canada. But, sir, were this the last public act of my life, I would protest against his doctrines, and appeal from his decisions.

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