MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of the 30th ultimo, information respecting the proclamation of martial law in the Territory of Washington, &c.

FEBRUARY 10, 1857.—Read, ordered to lie on the table, and be printed.

To the Senate of the United States:

I transmit a report from the Secretary of State, with accompanying papers, in answer to the resolution of the Senate of the 30th ultimo.

FRANKLIN PIERCE.

WASHINGTON, *February* 9, 1857.

DEPARTMENT OF STATE,
Washington, February 9, 1857.

The Secretary of State, to whom was referred a resolution of the Senate of the 30th ultimo, requesting the President to communicate to that body, if not incompatible with the public interest, "copies of the letters, and any other papers, which may have been received at either of the executive departments relating to the proclamation of martial law in the Territory of Washington by Governor Stevens, and also relating to the arrest of a judge of the said Territory while holding a district court of the United States and his retention by a military guard, and relating to any other proceedings under the said proclamation, not heretofore communicated to the Senate," has the honor to lay before the President the accompanying copy of papers, embracing all the correspondence and documents called for on the files and records of this department.

All which is respectfully submitted.

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

List of accompanying papers.

Messrs. Gibbs & Goldsborough to Mr. Marcy, (with enclosures,) June 6, 1856. Copy.

Chief Justice Lander to the same, (with enclosures,) June 7, 1856. Copy.

Judge Chenoweth to the same, June 8, 1856. Copy.

Messrs. Gibbs & Goldsborough to the same, (with an enclosure,) June 20, 1856. Copy.

Chief Justice Lander to the same, (with an enclosure,) July 20, 1856. Copy.

Mr. Marcy to Governor Stevens, September 12, 1856. Copy.

Messrs. Gibbs and Goldsborough to Mr. Marcy.

STEILACOOM, *June* 6, 1856.

SIR: We have the honor herewith to report further proceedings relative to martial law in this Territory, together with various documents connected therewith.

The military commission, assembled at Camp Montgomery for the trial of the citizens accused of treason, consisted of Lieutenant Colonel Hurd, Captains Maxon and Swindal, Lieutenant Lacy and Lieutenant Sheppard. This court met on Monday, the 19th ultimo, but not being provided with an order to assemble, adjourned until the next day. A copy of the charges has already been forwarded; only three of the seven persons originally arrested were arraigned on them, viz: L. A. Smith, Charles Wren, and John McLeod; of the others no notice was taken. On the 22d the court finally proceeded to business, and the charges having been read, a plea to the jurisdiction was put in by counsel for the defence. On the 23d the court allowed the plea, and adjourned until the following Monday. A copy of their proceedings is herewith forwarded, marked "A."

In the meantime the Hon. H. A. Chenoweth, associate judge for this district, having sufficiently recovered from his illness to hold court, at the request of sundry members of the bar, came to Steilacoom, having previously announced his intention to sit there on Saturday, the 24th, for the transaction of such business as could properly be done. He reached here on the evening of the 22d, and the next day writs of habeas corpus were sued out on behalf of Chief Justice Lander and the before-named prisoners. The writs were served on Lieutenant Colonel Shaw, commanding the volunteer forces at Camp Montgomery by the deputy marshal. The return is not set forth in the opinion of the judge upon the same, herewith sent, and marked "B."

On the 24th writs of attachment were issued against Colonel Shaw,

and placed in the hands of the marshal, but he having gone to Olympia, they were not served until Tuesday following.

A detachment of volunteers, under Lieutenant Curtis, of Captain Maxon's company, marched into Steilacoom during the morning with the avowed purpose of arresting the judge and putting a stop to the court. Judge Chenoweth had, on his part, ordered the posse of the county to be summoned under arms, and about fifty men accordingly appeared, determined to protect the court at all hazards.

A communication was also addressed to Lieutenant Colonel Casey, informing him of the circumstances, and requesting assistance from the military. This letter and Colonel Casey's reply have already been forwarded to the War Department. Anxious to prevent any collision between the volunteers and citizens, Colonel Casey proceeded to Steilacoom and had a personal interview with Lieutenant Curtis, which resulted in his withdrawing his force, and the court met and disposed of an admiralty case without interruption.

On the morning of Monday the 26th, as we are informed, a proclamation, dated the 24th, abrogating martial law, was posted at Olympia. A copy was also posted, upside down, at the hotel at Steilacoom the same evening; one of these documents bearing the governor's signature, as annexed, marked "C."

A copy of the proclamation of May 13, by which martial law was declared in Thurston county, is also enclosed, marked "D." Chief Justice Lander was on Monday released from custody at Camp Montgomery, but the court, which should have been held by him on that day in Lewis county, of course fell through. Smith, Wren, and McLeod were, notwithstanding the abrogation, still held to answer new charges.

A new commission, consisting of the same members, except that Lieutenant Colonel Hurd having resigned, Lieutenant Curtis, (who had on Saturday been detailed to arrest Judge Chenoweth,) was added to it, convened for their trial. This commenced on Wednesday the 28th, when the charges were, as we are told by their counsel, first read to them, no copy having been previously served. Not having been able to obtain one, we are unable to enclose it. The offence alleged is, as we are informed, in substance, the knowingly harboring and protecting hostile Indians after the commencement of the war. Wren and McLeod only were arraigned on them. A plea to the jurisdiction was interposed by their counsel, but after deliberation, disallowed by the court, and the prisoners called upon to plead. They pleaded not guilty, and thereupon the judge advocate *abandoned the prosecution*, and asked that they be turned over to the civil authorities. This was done, or, rather, the men were turned loose and came into Steilacoom of their own accord.

Colonel Shaw was arrested by the marshal at Olympia, and brought to Steilacoom on Wednesday the 28th, Judge Chenoweth having remained for the writs to be returned.

The next day the motion on the attachment was heard, when he refused to make any other return than his previous one; Governor Stevens having, however, addressed to the court a letter requesting that bail be allowed in his case, as his services were essential in the

field, the judge discharged him on his own recognizance to appear at the November term of court, and answer for his contempt. A copy of this letter is enclosed, marked "E."

On the same day Captain DeLacey made affidavit respecting the parties accused of treason, upon which they were arrested. Being desirous to have the examination gone through with, their counsel made no objection to its sufficiency, and it has taken place before J. M. Bachelder, esq., United States commissioner, Judge Chenoweth being compelled to leave town. A copy of the proceedings and testimonies will be sent as soon as completed. It is to be noted that the affidavit of Captain DeLacey is the first that has yet been made against any of these parties, although they had been some two months under arrest.

We are informed by Chief Justice Lander, that on Monday, the 2d instant, Governor Stevens, upon service of notice by the marshal, appeared before him at Olympia to answer to the attachment, and, on plea of urgent public business, obtained time until the first Monday in July.

We have purposely confined ourselves to a brief detail of facts, believing that the documents herewith forwarded will furnish the best comment on these various transactions, and fully exhibit the frivolousness of the pretexts under which Governor Stevens has sheltered himself. The proceedings before the United States commissioner have just been obtained, and are now added, marked "F."

We are authorized to say that every facility was furnished by the prisoners towards a full and free investigation, and that the only difficulty experienced arose from the fact that the volunteer officers refused to allow their men to appear as witnesses until attachments issued against them.

We are, sir, with perfect respect, your obedient servants,

GEORGE GIBBS.
H. A. GOLDSBOROUGH.

Hon. W. L. MARCY,
Secretary of State.

A.

CAMP MONTGOMERY, W. T., *May* 20, 1856.

Proceedings of a general court-martial, or military commission, convened at camp Montgomery, Washington Territory, by virtue of an order from Isaac I. Stevens, governor of the Territory of Washington and commander-in-chief of the volunteer forces thereof.

12 O'CLOCK M., *May* 20, 1856.

The court met pursuant to the said order. Present:

Lieutenant Colonel J. S. Hurd, aide-de-camp to commander-in-chief.

Major H. J. G. Maxon, southern battalion 2d regiment Washington Territory volunteers.

Captain C. W. Swindal, 2d regiment Washington Territory volunteers.

Captain W. W. DeLacy, 2d regiment Washington Territory volunteers.

Lieutenant A. Shepherd, 2d regiment Washington Territory volunteers.

Victor Monroe, judge advocate.

Quincy A. Brook, recorder.

The order convening this court not being present, the court adjourned until to-morrow at 12 o'clock m.

CAMP MONTGOMERY,
12 *o'clock m., May* 21, 1856.

The court met pursuant to agreement. The following is the order constituting this court, and which was omitted to be inserted in yesterday's proceedings, viz:

[Special order.]

OFFICE ADJUTANT GENERAL, W. T. VOLUNTEERS,
Olympia, May 16, 1856.

A general court-martial, or military commission, will assemble at Camp Montgomery on the 20th May, 1856, for the purpose of trying such persons as may be brought before it.

By order of the governor and commander-in-chief of Washington Territory volunteers:

JAMES TILTON,
Adjutant General Washington Territory volunteers.

Members of the Commission.—Lieutenant Colonel Hurd, Major Maxon, Captain Swindal, Captain DeLacy, Lieutenant Shepherd, Washington Territory volunteers.

Supernumerary.—Lieutenant S. B. Curtis, Washington Territory volunteers.

Judge Advocate.—Victor Monroe.

JAMES TILTON,
Adjutant General Washington Territory volunteers.

Present: Lieutenant Colonel J. S. Hurd, Major H. J. G. Maxon, Captain C. W. Swindal, Captain W. W. DeLacy, Lieutenant A. Shepherd, and supernumerary S. B. Curtis.

Present, also, the judge advocate and recorder. The recorder, at the request of the judge advocate, read the order convening this court.

The recorder, at the request of the judge advocate, read the charges and specifications of charges against Lyon A. Smith, Charles Wren, and John McLeod.

The judge advocate then made a written application, (A,) appended to these proceedings, asking an adjournment of the court, in order to obtain authority to amend the charges. Whereupon the court was cleared for deliberation; and after mature consideration, the court adjourned until to-morrow at one o'clock p. m.

CAMP MONTGOMERY, WASHINGTON TERRITORY,
1 *o'clock p. m., May* 22, 1856.

The court met pursuant to adjournment. Present:

Lieutenant Colonel J. S. Hurd, Major H. J. G. Maxon, Captain C. W. Swindal, Captain W. W. DeLacy, Lieutenant A. Shepherd, and supernumerary Lieutenant S. B. Curtis.

Present, also, judge advocate and recorder.

The judge advocate presented a fourth specification or order by the commander-in-chief, which was ordered by the court to be filed, and which is annexed to the original specifications.

The judge advocate asked leave to amend the phraseology in the second specification, substituting the word "were" for "was," in the fourth line, and in the eighth line the word "they" for "he." Whereupon the court was cleared for deliberation; and after mature consideration, the court ordered the proposed amendments to be made.

A copy of the fourth specification having been delivered to Lyon A. Smith, Charles Wren, and John McLeod, the orderly sergeant brought into court Lyon A. Smith. The judge advocate read aloud to the prisoner the order convening this court, and the charges and specifications of charges, (marked B, appended to these proceedings,) and asked him if he had any cause of challenge to any member of the court mentioned in the warrant order, to which the accused answered that he had no objection to any member of the court.

The judge advocate administered the oath prescribed by law to all the members of the court and to the supernumerary, and the president, Lieutenant Colonel J. S. Hurd, administered the required official oath to the judge advocate.

The prisoner asked to be allowed as counsel William H. Wallace, B. F. Kendall, and Frank Clark, esqs.

Whereupon the court was cleared for deliberation; and after mature deliberation, granted the request of the prisoner, and allowed said gentlemen to act as his counsel. The prisoner, by his counsel, then offered a written protest or plea (C) to the jurisdiction, appended to these proceedings, which was read by the judge advocate.

The judge advocate having asked time to reply to the plea of the prisoner, the court adjourned until to-morrow at 8 o'clock a. m.

CAMP MONTGOMERY, WASHINGTON TERRITORY,
8 *o'clock a. m., May* 23, 1856.

The court met pursuant to adjournment. Present all the members of the court, supernumerary, judge advocate, and recorder.

Lyon A. Smith, the accused, also present. Upon reading the minutes of the proceedings of yesterday, the prisoner made the following written request:

"Mr. PRESIDENT: L. A. Smith requests that the plea to the jurisdiction be copied into and form a part of the record of this trial.

"L. A. SMITH."

The court was cleared for deliberation; and after consideration,

the court ordered the plea to be entered on the record, and is as follows, viz:

"Mr. PRESIDENT: Lyon A. Smith protests against the competency of this commission or court-martial for want of jurisdiction, on these several grounds:

1. The allegations and charges set forth in the specifications constitute the crime of treason, which can alone be tried in the civil courts of the United States.

2. Citizens cannot be tried either by courts martial or military commissions.

3. This is not a legally constituted tribunal, inasmuch as the volunteer forces of this Territory are not organized under the militia law of this Territory, or under any law of the United States, and that this court has been ordered by a person incompetent legally to do so.

4. That neither militia nor volunteer forces, until mustered into the service of the United States, are amenable to, or authorized to institute any military court, as they have no authority conferred by the constitution and laws of the United States, or by the statutes of this Territory.

5. That the order for this court-martial or military commission makes it a special commission, and does not designate the persons to be tried by said commission.

LYON A. SMITH,
Per Attorney.

The judge advocate then read the following paper, marked D, viz:

Mr. President and gentlemen of the court:

The allegations and charges set forth in the specifications against L. A. Smith, the accused, are, that he did knowingly harbor, protect and assist with victuals, ammunition, shelter, sympathy, and friendship, certain marauding bands of hostile Indians, waging unlawful war in Washington Territory against the United States; and any person guilty of such an offence is subject to the jurisdiction of a court-martial or military commission, whether he be a citizen or alien.

This is a legally constituted tribunal, having been called by Isaac I. Stevens, governor of the Territory of Washington, and commander-in-chief of the volunteer forces of the Territory now in the field, called out by his proclamation, and co-operating with the regular forces against the common enemy, now waging war in said Territory against the United States, the said Isaac I. Stevens, in his capacity as commander-in-chief, being perfectly competent to call out such forces.

The warrant order for this court-martial or military commission does not make it a special commission, but, on the contrary, it is a general commission to try all persons that may be brought before it; and, under the charges and specifications filed against the accused, his has been regularly brought before this court.

It is therefore asked that the protest or plea of L. A. Smith, filed, may be overruled, and that he be required to answer over.

V. MONROE,
Judge Advocate.

Hereupon the court room was cleared for deliberation; and after a short time spent in consideration, the court was opened, the prisoner brought in, and the president announced that the decision of the court would be made known at 1 o'clock this afternoon; to which time the court then adjourned.

CAMP MONTGOMERY, WASHINGTON TERRITORY,
1 *o'clock p. m., May* 23, 1856.

Court met pursuant to adjournment. Present all the members, supernumeraries, judge advocate, recorder, and L. A. Smith, the accused.

The court was then cleared for deliberation; and after mature consideration, the court gave the following opinion, viz:

"The charge against Lyon A. Smith is 'aiding and comforting the enemy.' We are of opinion that such an offence constitutes the crime of treason, and that this court has no jurisdiction as a military court to try and punish a prisoner for such an offence.

"We are, however, of opinion that this court was ordered by a competent authority, and that it is legally and constitutionally created, and has jurisdiction of such crimes as are cognizable by military tribunals."

The court then adjourned until Monday, May 26, 1856, at 1 o'clock, p. m.

JARED S. HURD,
Prest. M. C.
H. J. G. MAXON,
Major S. B.
C. W. SWINDAL,
Capt. 2d Regt., W. T. Vol.
W. W. DELACY,
Capt. W. T. V.
ANDREW SHEPHERD.

I hereby certify that the foregoing is a true copy of the proceedings of the military commission at Camp Montgomery, up to May 26, 1856.

VICTOR MONROE,
Judge Advocate.

4th Specification.—In this: that on the 10th day of March, 1856, the said Lyon A. Smith, Charles Wren, and John McLeod were ordered by Isaac I. Stevens, governor and commander-in-chief of the volunteer forces of Washington Territory, to retire from their land claims, (situated in the country inhabited and infested by said marauding bands of hostile Indians, waging unlawful war against the United States,) and to take up their residence, until the termination of Indian hostilities, in either the towns of Olympia or Steilacoom, or Fort Nesqually; that the said Smith, Wren, and McLeod did with-

draw from their said land claims, but afterwards, without authority or permission, returned to their homes to re-establish unlawful communication and intercourse with said hostile Indians, by relieving them with victuals and ammunition, and knowingly harboring, protecting, and holding correspondence with them.

By order of the governor and commander-in-chief Washington Territory volunteer forces:

JAMES TILTON,
Adjutant General Washington Territory Volunteer Forces.

NOTE.—The above was furnished by counsel for defence, and does not form part of the record.

G. G.

B.

Opinion of Hon. F. A. Chenoweth, delivered on 24th May, 1856, on the return of the marshal to his service of writs of habeas corpus, for the bodies of Chief Justice Lander and others at Steilacoom, W. T.; also a letters to members of the bar.

NOTE.—The facts connected with the arrest and imprisonment of Chief Justice Lander and of the other individuals for whom writs of *habeas corpus* issued, and which constitute the basis of the opinion here given are excluded on account of their prolixity.

WHIDBY'S ISLAND, *May* 15, 1856.

GENTLEMEN: The information, requests, &c., which I have just received from you, have filled my mind with deep concern for that portion of my district. If it is necessary, as you represent, that I should come to Steilacoom as soon as my health will permit, for the purpose of transacting such business as may be done at chambers, it would first become necessary to consider how far I should (in my official conduct) regard the proclamation of martial law by the governor; and whether I should, under the circumstances, go forward in my official duty or not.

I am free to confess that I was greatly shocked at the proclamation of martial law, and especially as it appeared by its terms to be a direct and intended suspension of the writ of *habeas corpus*.* I then believed it to be a monstrous assumption of arbitrary power, without the shadow of legal authority in the governor for its exercise. But still I thought, and fully believed, that when we should hear the governor's reasons for his conduct, he would show and demonstrate to the satisfaction of all, that there was such necessity for his course, as would greatly palliate the error of taking the law into his own hands. It is true that I could see nothing of the necessity in his proclamation; indeed that document went far to prove that there was no necessity for such proclamation.

In assigning causes for declaring martial law, his excellency does

not intimate any difficulty in the prompt and efficient arrest and prosecution of those "evil disposed persons" in the courts of law; neither does he suggest that any justice of the peace, constable, or sheriff had refused or even shown a reluctance to serve any process, or that the people of Pierce county, sympathized with the persons accused, so that they would not probably find them guilty, should there be evidence of their treason; and the want of any mention of all or any of these difficulties in the proclamation, appears to be conclusive evidence that they did not exist. Indeed if the courts of law were fully open to him, and the people of the county did not hinder or obstruct the operation of law, it is difficult to conceive the necessity for so extraordinary a proceeding, and the lives and interests of the people would seem to be a sufficient guarantee, that they could not but feel a deep and lively concern in the prompt arrest and punishment of traitors. But notwithstanding all these circumstances appeared to be against the governor, from his own showing, yet I believed that when he came to be fully heard, he would show something that would tend to justify, or at least palliate his course; in this I was disapointed. His vindication appears more like a confession of his error than a justification of his course; it shows no necessity whatever for taking the law in his own hands. He does not even intimate that there was the slighest difficulty in prosecuting to final judgment and execution of these "evil disposed persons." He says "there was an overruling necessity," but shows none; indeed the description of the case shows there was none. Not an intimation that a single citizen of the county was the least inclined to obstruct legal process, or that any justice of the peace had refused a warrant, (*See United States Statutes at Large, 1st vol. 91st p. 33d sec.,*) or sheriff had refused or shown the least reluctance to act faithfully and promptly in his service; nor does he intimate that the district court was or would be inclined to discharge them. Governor Stevens knew well that the district court would discharge no person, legally committed, for any crime, much less the crime of which these persons are accused; they might demand the writ of *habeas corpus*, but it could avail them nothing, if they were guilty. All the writ amounts to, or can be made to amount to, is to discharge persons, thrown into prison without cause, or without being charged with crime; it cannot be made to avail the guilty, but is the great safeguard of the innocent; and none but a corrupt court would discharge a prisoner on a writ of *habeas corpus*, if there was evidence of his guilt; or even if there was a well founded suspicion of guilt, he would be remanded to prison, to await his trial by a jury.

On inquiries upon these writs, courts do not require technical proof of the guilt of the accused, and frequently refused to discharge them, when there is no direct proof at the time against them, but detain them in prison, if satisfied that proof exists, and can be obtained, to establish the charge against them. But his excellency says these "evil disposed persons" remained in security on their claims, receiving the visits of the hostiles, furnishing them with provisions, &c. Now we do not doubt a word of all he says about these persons. For the purpose of the present inquiry, we take the whole case as stated by

the governor, to be true in all respects, and considering every fact and word most favorable to his case, and viewing it in this favorable light, does it show any necessity for such a proceeding?

Supposing these persons to be guilty of all they are charged with, nothing less than treason, we have only to say, that courts of law have been established, und are now prepared to try and punish just such crimes; and without an open violation of the Constitution of the United States, no other courts can try them, (see 3*d article of amended Constitution.*)

I have inquired at some length into the question of necessity, because, if it really exists, in it we could find much to atone for violated rights; but we do not conceive that any NECESSITY, would confer upon the executive powers that the LAW does not confer. The powers of the executive are defined by law, and it is simply a question of examination, as to whether the law has empowered him to do what he has done. If he is acting strictly within his legal powers, his acts should be respected, and his mandates obeyed by all; but if he has gone beyond the boundaries fixed by law, such acts are nugatory. I know of no law that gives him such power, and believe there is none. Consequently, his proclamation is just like the proclamation of any other unauthorized individual, utterly destitute of authority. Holding these views, I conceive it to be my duty to continue to exercise the powers of the district court as heretofore. Not much business can be done at chambers, but I will cheerfully do all that can properly be done; I will hear all cases in admiralty, grant injunctions, hear motions upon pleadings, &c., &c., unless prevented by force.

I have fixed Saturday, the 24th inst. at 10 o'clock, a. m., at the court-house at Steilacoom as the time of sitting.

Yours, truly,

F. A. CHENOWETH.

Messrs. Col. W. H. WALLACE,
Gen. GEORGE GIBBS,
Hon. FRANK CLARK.
Steilacoom, Pierce County, W. T.

OPINION.

On the morning of May 23, 1856, a writ of *habeas corpus* for the body of Edward Lander, chief justice of the Territory, was applied for, on the affidavit of Frank Clark. The affidavit sets forth that he was held in confinement, without any charge, at Camp Montgomery, in Pierce county, by Col. Benjamin F. Shaw. On the same day a similar application was made for a writ of *habeas corpus* for the bodies of Lyon A. Smith, Charles Wren, and John McCloud. The affidavit states that they are citizens of the county of Pierce, and held in confinement by the same officer, Colonel Shaw, and that a court-martial of officers of the volunteers was about to try the last named individuals upon a charge of treason against the United States.

These writs were served by the deputy marshal, E. Schroter, who

makes return of copies of the original writs with a copy of the return made by Col. Shaw upon the said writs. His return states that Col. Shaw refused to allow him to bring back the original writs, and also refused to make his return on separate paper, so that he could bring back Col. Shaw's return in his own hand writing, but that Col. Shaw allowed him to take a copy of the original writs and his return endorsed on them. The returns thus made, are as follows: to the writ for the body of Edward Lander:

"The within named person is detained in custody by me, as commander of the volunteer forces, by order of the governor and commander-in-chief of the W. T. volunteers.

B. F. SHAW,
Lt. Col. commanding Right Wing W. T. Volunteers.
CAMP MONTGOMERY, *May* 23, 1856."

To the writ for the bodies of Wren, Smith and McCloud, the return is:

"The within named persons are detained in custody by me as commander of the volunteer forces, by order of the governor and commander-in-chief of the W. T. volunteers.

R. F. SHAW,
Lt. Col. commanding Right Wing W. T. Volunteers.
CAMP MONTGOMERY, *May* 23, 1856."

These returns are insufficient, and the *manner* of the returns but an aggravation of the contempt. Col. Shaw cannot justify his disobedience to the writ, by the order of Governor Stevens. The writ of *habeas corpus* is a higher authority than Governor Stevens, and should have been obeyed by bringing the bodies of the prisoners forthwith before the court, and under all the circumstances of this aggrated case, I am disposed to grant the motion for an attachment at once in both cases, believing the circumstances require it. In stating the reasons of the court, as the cases are not dissimilar, I will consider them together to save trouble of giving an opinion in both cases, and the haste of preparation must excuse the brevity with which many of the points are discussed, for while I am preparing this opinion, Governor Stevens is assembling his armed powers to make me a prisoner for issuing writs of *habeas corpus* while *his martial law* is in force, and its enforcement secured by volunteers to the amount of two hundred men in Pierce and Thurston counties.

It is not necessary for me here to waste time in the inquiry, as to the powers or authority of Governor Stevens to declare martial law. We think it too absurd to be gravely considered, and such a paper, had it been put forth by any other than a high functionary, its obvious want of authority would have been admitted by all; but coming from the governor of the Territory, some well disposed persons, without taking the trouble to examine, might allow themselves to fall into the belief that it was promulgated by his excellency from clear and undoubted power conferred by law. It is hard to believe that any man, without the most clear and explicit authority of law, would attempt to carry into effect acts so grave and big with consequences.

The governor of this Territory derives all his authority from the second section of our organic act, and in that section no such powers are conferred.

And now as to his powers to enforce such proclamation. Tis true, he has physical force equal to the number of men and arms under his command; if these men will obey him, he can seize private property, or private persons. He may imprison their persons, order them shot down, or put in irons; if these officers and men are disposed to obey, and so far forgetful of the Constitution and the laws of the land, as to carry out an illegal order, he may enforce his martial law to any extent. But this is not the power we look for to sustain the acts of the Executive. We look for the unseen, but what should be omnipotent, power of the law. Under the system of physical force, like the one which has been acted out within the last few weeks in these two counties, the theory has been reversed. The *law* has become impotent; its process has been obstructed and contemned; its judges insulted and imprisoned, and the word and authority of one man, without pretence of law, has been set up as the supreme law of the land. The proclamation of martial law appears to have been for no other purpose than to suspend the writ of *habeas corpus*, one of those fearful acts of arbitrary power which the crown of England would not attempt, being an infraction of English rights and liberties, that would immediately be met by open resistance, yet a governor of a free and republican Territory in the New World, where the personal, constitutional, and inalienable rights of the people were supposed to be far more firmly secured than in England, steps forward, and with apparent indifference, suspends the great *writ of right*, as though it were among the small prerogatives of the Executive. Mr. Justice Blackstone, speaking of this writ, and of the circumstances of danger to the State, when to save the State the writ may be suspended, says: "But the happiness of our Constitution is, that it is not left to the Executive power to determine when the danger of the State is so great as to render this measure expedient: for it is the Parliament only, or legislative power, that, whenever it sees proper, can authorize the crown, by suspending the *habeas corpus* act for a short and limited time."—(Bl. Com. 1st vol. p. 136.)

To those who have read our Constitution, it is hardly necessary to say that Congress is the only power in our government that can suspend the operation of the writ of *habeas corpus*.—(Con. U. S., art. 1, sec. 9.)

If, then, the governor has no authority to proclaim martial law for such a purpose, all his proceedings in the arrest and imprisonment of the chief justice, as well as the other applicants, are illegal and arbitrary.

As to martial law in general, it may safely be assumed that since the adoption of the Constitution martial law has never legally existed, and never will legally exist without the express provision of Congress. Several abortive attempts to proclaim and enforce it have been made in the United States, and in one instance only, the great good accomplished to the nation was deemed to atone for the illegal act.

The laws of the United States recognize the existence of only two kinds of armed force—the regular army and the militia—except when by special act the President of the United States is authorized to raise a volunteer force, which, however, then becomes, temporarily, a part of the army itself. The principal laws relating to the militia, and which indicate by their titles the object of its creation, are the act of January 2d, 1795, entitled "An act more effectually to provide for the national defence, by establishing a uniform militia throughout the United States," and the act of February 28, 1795, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." The organization and government of the militia is provided for by these acts and others supplementary, in short, that kind of force *permanently established.* But the laws of the United States nowhere contemplate the existence of volunteer forces, unless officially raised by authority of Congress, as was done, for instance, in the war with Mexico; and in those cases the mode in which they shall be organized, the discipline and government to which they shall be subjected, are always expressly provided. It is, therefore, not under the laws of the United States that this species of force has been called out in this Territory.

As, however, it sometimes happens that the calling forth of the militia is inconvenient, from defective organization, or other causes not necessary to inquire into, it may be proper fort he governor of the States or Territories to call for voluntary aid from the citizens, relying upon the justice of Congress to recognize their claims for service. But not being embodied under any general or special law, this class of armed force is not subjected to military discipline. Its members cannot be tried by courts martial for any breach or neglect of military duty, and in fact have no recognized existence except as a body of citizens acting together for the public good. Such is the description of forces now employed by the governor of this Territory.

Our legislature, by an act of January 26, 1855, have, indeed, provided for a particular kind of volunteer force, but it is not the one here in the field. That act, which is entitled "An act to organize the militia," districts the Territory for that purpose, and provides for the enrolment of the citizens, and the mode of electing the officers, viz: a brigadier general, adjutant and quartermaster general, *by the legislature;* a colonel, lieutenant colonel, and major, *by the legal voters* of each council district; and the subordinate officers in other modes. The organization of the militia under this act has never been completed, and the militia, so far as this Territory is concerned, does not in fact exist. The section (sec 7) which provides that volunteer companies may be formed *in the bounds of any regiment*, under such rules and regulations as shall be prescribed by the colonel thereof, and approved by the brigadier general, has therefore never become operative. The present volunteer force was called out by the governor, not under this or any other law, but from mere necessity, and has therefore no other legal existence than any assembly of citizens.

But even were it otherwise the claim for jurisdiction of the volun-

teer force over citizens, not belonging to their body, would be a thing unheard of. Until such force is actually mustered into the service by an authorized mustering officer, it has no authority even over its own members.

The 2d section of the organic act defines the powers of the governor of this Territory, and as he owes his existence to that act, his powers are limited to those actually granted by it. The act makes him "commander-in-chief of the militia," *and of the militia only*. His claims to be commander-in-chief of the volunteers rests on no other or better basis than that it was at his call they took up arms. Doing this voluntarily, they may, if they see fit, comply with his orders ; but he possesses no compulsory powers over them, except he can revoke his call for their assistance—in short, discharge them at pleasure. If his orders are illegal, they can not appeal to them as a justification. The responsibility for bloodshed, for resistance to lawful authority, or any other criminal procedure, can not be shifted on to his shoulders. He is only an accessory before the facts, the actor is the principle. Fines for contempt of court may be imposed, indictments for murder, assault, and false imprisonment, will lie even against privates acting illegally under the order of any superior.

The question as to the right of declaring martial law under any circumstances, and authority by which it can be proclaimed, has been considered elsewhere. It remains to say a few words on the subject of courts martial and their jurisdiction. These courts, like all others in our country, derive their authority from positive law, and by this law they are bound down. The 5th amendment to the Constitution of the United States declares that "*no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in times of war or public danger.*" This section fully covers the case. It limits the jurisdiction of courts martial to persons in military service. Even during the continuance of martial law, when legally proclaimed, a citizen can not be tried by a court martial, legally constituted. If accused of crime, he must be remanded ultimately for trial to the courts of law. This principle is distinctly recognized by De Hart in his treatises on courts martial, as follows : "The jurisdiction of courts martial is special and limited, arising from the cognizance of crimes as committed by individuals ; that is, by *individuals subject to military law* ; and the crimes or acts are such as are repugnant to military discipline, and are pointed out by law, by the general regulations for the army and by the customs of war."—(*De. Hart. C. M. p.* 19.)

With regard to the jurisdictions of a military commission over crimes of this description, we hope we may be so happy in our mode of reasoning as to satisfy the gentlemen composing that court, that our position is tenable, and that in granting this attachment, and enforcing the return of the writ of *habeas corpus*, we are only carrying into effect and giving vitality to the law. Being well satisfied of the integrity of every man upon the commission, it would be our pleasure to assist them in investigating this question, and if possible to ascertain the truth. We believe it is not *strife* or *victory*, but a sincere de-

sire to ascertain what the law is, that actuates us all. As the matter of committing a judicial murder would be an awful thing, and would look terrible on the page of history, let us not be afraid to go to the foundation. Let us *see* the law under which we were called out and organized as a body of volunteers, and if we *find* the law, let us study its language and the import of its substantial and special requirements. Should we find that we had substantially complied with it, and have really an existence, known and recognized by law, should our inquiries be satisfied on *this* point, then let us next inquire what provisions the law under which we are acting has made for *courts martial.*

Should we become satisfied that there are clear provisions of law for courts constituted as we are, then our next inquiry should be as to what *crimes* the law under which we act has authorized us to try, and by what rules does the law require us to be governed in the trial; what are the rights of the State and what the rights of the prisoners, as defined by law; for it is the boast of our happy land, that "*the law is supreme,*" and that no person can be condemned but by the law.

In *despotic* countries, prisoners are tried by the *will* and *word* of the despot, or those whom he may appoint. That *will*, often hastily formed under the excitement of anger, and with more regard to his own pleasure than the rights of the prisoners. Not so in our country. The blood and treasure of our fathers have secured to us a CONSTITUTION, and LAWS framed under and within the purview of that Constitution; and by these laws we profess to be governed. We acknowledge no other sovereign.

All courts, of whatever description, disclaim any will or power in their members; they merely look for the *law*, and let the LAW *condemn* or *justify*. Any departure from this rule is the assumption of arbitrary power. With regard to the law that governs *courts-martial*, some of the States, by legislative enactments, have adopted in substance the *articles of war* enacted by Congress for the regulation of the army of the United States. If you find, upon examination, that our legislature has adopted these articles as a part of the law governing the volunteer forces of this Territory, then your way is clear, and you have law and a beaten track for every step you take. But if you do not find that the legislation of either Congress or our own Territory has recognized your existence and defined your course, under what law then do you act? It is because I do not find legislation on these subjects to meet the case, that I have been led to doubt your power to try any one. But should you differ from me, and find that you have full legal power to act as a court-martial, will you extend your jurisdiction to all persons, citizens, and soldiers? One of the articles of war on the subject of furnishing "ammunition, aid, and comfort to the enemy," employs broad and comprehensive language. "Whosoever," as though it included every description of persons, standing alone it might receive such a construction, but it would be contrary to the general tenor of the articles of war, and directly opposed to the fifth amendment of the Constitution. Words that will admit of different meaning, should receive that meaning that will harmonize with the law of which it forms a part; and if being so construed it is still in violation of the Constitution, the

act is null, and the constitution must receive its full power. The meaning of that article would appear to be this: that whatsoever belonging to the army, &c., and like other portions of the act, clearly limits the jurisdiction to persons belonging to the army.

The great importance of adhering to *the law* as our *sovereign* is indicated by the recollection of the happy, free, and unrestrained liberties in which we moved, scarcely conscious of the power of the government, only feeling its pressure in the commission of crime, compared with the utter confusion, uncertainty, distrust, and violence that have reigned for the last few weeks in these counties, since the constitution and laws have been broken down. How soon we realize the value of the law when it is taken from us!

Notwithstanding we believe the proclamation of martial law illegal, and the formation of a military commission for the purpose of trying the offences of citizens equally illegal, yet if the commission was legal and of full and undoubted authority of law, and admitting, too, that Gov. Stevens has full power to command the volunteers, *as he undoubtedly has of the militia*, yet, still, Col. Shaw cannot justify disobedience to the commands of a writ of *habeas corpus* because he acts under orders of Gov. Stevens. The writ must be obeyed as of higher authority than any orders of a commander-in-chief. The person to whom the writ is directed must produce the prisoners, or show by an unequivocal return that they are not in his custody or power.

The case of Stacy, reported in 10th Johnson, p. 327, is similar to the one before me; and the clear and able opinion in that case, given by Mr. Chief Justice Kent, is here inserted as an authority that must be conclusive:

"*Affidavit of Justin Butterfield*, taken the 5th *August*, 1813, stating that he served the said writ on *Morgan Lewis*, at *Sackett's Harbor*, on the 23d day of *July* last, and that Gen. *Lewis* then asked his subordinate officers who were there present, '*if Stacy was the man's name whom we have in custody*,' or words of the like import, to which they answered that was the name; that the said *M. Lewis* then told the deponent that *he should return that the said Stacy was not in his custody; that he believed the said Stacy had been guilty of treasonable practices in carrying provisions and giving information to the enemy, and that he believed a court-martial was the proper tribunal to try the said Stacy, though he was a citizen*, or words of like import; that the said *M. Lewis* then made the return which appears on the writ; that the deponent then asked the said *Lewis* if he would inform him in whose custody the said *Stacy* was, to which the said *Lewis* answered that *he would not;* that the deponent then went to *Royal Torrey* and asked him if he was a subordinate officer acting under General Lewis, and he answered that *he was provost marshal under General Lewis; and he further answered, on interrogation, that Samuel Stacy, jun., was in his custody, and that on the 18th of July last he took him into his custody by virtue of an order from John Chambers, quartermaster general; that the order contained no charge against Stacy, and that Stacy had ever since remained in his custody;* that the deponent then served the writ on *Torrey*, and offered him the money endorsed on the writ, and a bond to be executed according to the statute; that *Torrey* then

said that *he could do nothing until he had seen General Lewis;* that on the next day, being the 24th of *July*, he again called on *Torrey*, and found him copying the return above annexed from a draught which the deponent saw and believed to be in the handwriting of *General Lewis*, and he then gave the deponent the writ and the above return, and said *that he had conversed with General Lewis, who believed that Stacy was guilty*, and that he should make no other return; *and that if the deponent would go and convince General Lewis that Stacy was innocent, that General Lewis would discharge him; that Torrey* told the deponent that *after he had been served with the above writ he had given up to General Lewis the orders upon which Stacy was detained at the time of the service of the writ, and that the order above annexed had been received after the service of the writ.*

"The deponent further stated that *Stacy* had been closely confined at *Sackett's Harbor* for the space of five or six weeks; that at the time of the service of the writ he was sick and confined in a small tent, and the guard informed the deponent they had orders to let no one visit him or speak with him but the physician and his wife, and that the deponent had since been informed that *Stacy* had been put in a guard-house and closely confined, and that his health continued bad."

KENT, Ch. J. The return is insufficient and bad upon the face of it. The writ was directed to *Morgan Lewis*, as commander of the troops of the *United States* at *Sackett's Harbor;* and under his title of "general of divisions in the army of the *United States*," he simply returns "that the within named *Samuel Stacy, jun.*, is not in my custody." This was evidently an evasive return. He ought to have stated, if he meant to excuse himself for the non-production of the body of the party, that *Stacy* was not in his *possession or power*. The case of *The King* vs. *Winton* (5 *Term, Rep.* 89) is to this point; and the observation and decision of the K. B. in that case are entitled to our deepest attention. That was a case of a *habeas corpus* granted by a judge in vacation and returnable immediately before him. The return by the person to whom the writ was directed was, that he had not the body of the party "detained in his custody;" and that return being filed in the K. B., an attachment, on a rule to show cause, was made absolute against the party for an insufficient return. Mr. Justice *Grose*, in giving his opinion, observed "that the courts always looked with a watchful eye at the returns to writs of *habeas corpus;* that the liberty of the subject essentially depended on a ready compliance with the requisitions of the writ, and the courts were jealous whenever an attempt was made to deviate from the usual form of the return; that the party had not the person *in his possession, custody, or power*, and that it had not been adopted in that case, but an equivocal one substituted, and the words 'power and possession' omitted."

"The accompanying return, in this case, of *Torrey*, the provost marshal, does, of itself, contradict the return of General *Lewis;* for he admits that *Stacy* is detained in his custody, under an order issued from the adjutant general's office, at *Sackett's Harbor*, so late as the 24th of *July* last. This order, and the detention under it, we are bound to consider as the act of General *Lewis*, the commander at that

station, and we are equally bound to consider the prisoner as being in his possession, custody, and power.

"Here is, then, appearing on the very face of the return, a contempt of the process.

"But this is not all. The affidavit of *Butterfield*, who served the writ, proves not only the fact that *Stacy* was then in the custody, under the orders and by the authority of General *Lewis*, but that the direction of the writ was intentionally disregarded.

"The only question that can be made is, whether the motion for an attachment shall be granted, or whether there shall be only a rule upon the party offending, to show cause by the first day of the next term why an attachment should not issue. After giving the case the best consideration which the pressure of the occasion admits, I am of opinion that the attachment ought to be immediately awarded.

"The attachment is but process to bring in the party to answer for the alleged contempt; and upon the present motion we must act, as the courts have always, of necessity, acted in like cases, upon the return itself, and the accompanying affidavits of the complainant.

"This is a case which concerns the personal liberty of the citizen. *Stacy* is now suffering the rigor of confinement in close custody, at this unhealthy season of the year, at a military camp, and under military power. He is a natural born citizen residing in this State. He has a numerous family dependent upon him for their support. He is in bad health, and the danger of a protracted confinement to his health, if not to his life, must be serious. The pretended charge of treason, (for upon the facts before us we must consider it as a pretext,) without being founded upon oath, and without any specifications of the matters of which it might consist, and without any color of authority in any military tribunal to try a citizen for that crime is only aggravation of the oppression of the confinement. It is the indispensable duty of this court, and one to which every inferior consideration must be sacrificed, to act as a faithful guardian of the personal liberty of the citizen, and to give ready and effectual aid to the means provided by law for its security. One of the most valuable of those means is this writ of *habeas corpus*, which has justly been deemed the glory of the *English* law; and the Parliament of *England*, as well as their courts of justice, have, on several occasions, and for the period, at least, of the two last centuries, shown the utmost solicitude, not only that the writ, when called for, should be issued without delay, but that it should be punctually obeyed.—(See *Brown's case*, *Cro. Jac.* 543, and the stat. of 16 *Car.* 1, c. 10, s. 8.) Nor can we hesitate in promptly enforcing a due return to the writ, when we recollect that, in this country, the law knows no superior; and that in *England*, their courts have taught us, by a series of instructive examples, to exact the strictest obedience to whatever extent the persons to whom the writ is directed may be clothed with power, or exalted in rank. On ordinary occasions the attachment does not issue until after a rule to show cause; but whether it shall or shall not issue in the first instance must depend upon the sound discretion of the court, under the circumstances of each particular case. It *may*, and it often *does*, issue in the first instance, without a rule to show cause, if the case be urgent, or the contempt flagrant.

On this point the authorities are sufficiently explicit.—(*Rex* vs. *Jones*, *Stra* 185. *Davies*, ex dem. *Povey*, v. *Doc*, 2 *Bl. Rep.* 892. *Hawk*, tit. *Attachment*, b. 2, c. 22, s. 1.)

"If ever a case called for the most prompt interposition of the court to enforce obedience to its process, this is one. A military commander is here assuming criminal jurisdiction over a private citizen, is holding him in the closest confinement, and contemning the civil authority of the State."

I am therefore of opinion that an attachment should issue immediately in both cases.

In closing this opinion, the court feels justified in saying a few words as to the duty of volunteers. It is proper for them, having volunteered promptly, to obey all legal orders to subdue the Indians, the object for which they left their homes, and made so many sacrifices. Obedience to orders is at once the pride and duty of a good soldier. But when they are led against citizens, or ordered to enter the temples of justice, and drag from their seats the judges, such orders ought not to be obeyed. The order is unlawful and obviously so, to the most common mind, and soldiers cannot protect themselves against indictments, fines, and imprisonment, behind the unlawful orders of their commanders. Such acts will greatly embarrass Congress, to whom alone the volunteers look for a reward for their services. It is to be hoped that Congress will feel disposed to pay for fighting Indians; surely they cannot deny a thing so just. But the private, if not equally guilty with his commander, is guilty of a violation of the criminal law in obeying such orders.

Ordered, That an attachment issue immediately against Lieut. Col. Benjamin F. Shaw, returnable forthwith, before the court at chambers, in Steilacoom, in both cases.

F. A. CHENOWETH,
Judge 3d Judicial District.

C.

PROCLAMATION.

Whereas certain persons, charged with giving aid and comfort to the enemy in the existing Indian war, were arrested by my orders, for the purpose of bringing them to trial before a military commission; and whereas, to prevent the execution of the designs of certain evil disposed persons to take from the custody of the military the persons so charged, martial law was declared, successively, in the counties of Pierce and Thurston; and whereas the persons so charged have been retained in military custody, and have been brought before a military commission, and are now on their trial for the offence above mentioned; and whereas there is no longer any necessity for the existence of marshal law in the said counties: Therefore—

Be it known that I, Isaac I. Stevens, governor of the Territory of

Washington, do hereby abrogate marshal law in the said counties of Pierce and Thurston.

Given under my hand, at Olympia, this twenty-fourth day of May, in the year of our Lord eighteen hundred and fifty-six, and the year of independence the eightieth.

[L. S]

ISAAC I. STEVENS,
Governor Territory of Washington.

D.

PROCLAMATION.

Whereas, in the prosecution of the existing Indian war it became necessary, for the reasons set forth in the proclamation of the governor of the Territory of Washington, of the 3d of April, to proclaim martial law in and through Pierce county, in said Territory; and whereas the same efforts are now being made in the county of Thurston, by the issue of the writ of *habeas corpus*, to take from the purview of the military commission which is ordered to convene on the 20th instant certain persons charged with giving aid and comfort to the enemy; and whereas an overruling public necessity leaves no alternative but to persist in that trial, in order that the military operations be not rendered abortive, and the lives of the citizens needlessly sacrificed: Therefore—

I, Isaac I. Stevens, governor of the Territory of Washington, do by these presents proclaim *martial law* in and throughout the county of Thurston, and do call upon all good citizens to see that *martial law* is enforced.

Given under my hand, at Olympia, this thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-six, and the year of independence the eightieth.

[L. S.]

ISAAC I. STEVENS.

E.

EXECUTIVE OFFICE,
Olympia, May 28, 1856.

SIR: I have just received a letter from Lieutenant Colonel Shaw, informing me that he was held in close custody for contempt of court, and that the marshal was ordered to keep him in close custody till the return required by the court was made.

I understand that the return is one which Lieutenant Colonel Shaw does not feel in conscience he can make, as he recognised fully my orders under martial law.

The object of my addressing you is to inquire whether it is not within your discretion to have bail given in Colonel Shaw's case, or

whether, instead of being held in close custody, it is not within your discretion to dispose of the affair by the imposition of a fine?

The condition of the country is such, that very grave consequences, disastrous to the Territory, will, in my opinion, result from Colonel Shaw's continued imprisonment. He is at this moment charged with an important expedition into the Indian country, which, it is hoped, will relieve the people on the Sound from further apprehension, and his presence with the troops is at this moment urgently required, in consequence of hostile Indians being known to be in the neighborhood.

I do not propose to discuss the question of martial law. I believe it was my duty and right to proclaim and enforce it as I did—that I would have been recreant to my trust had I done otherwise You take a different view of the matter.

I have abrogated martial law, and it now, of course, becomes my duty, under my oath of office, to see that the laws are faithfully executed, to sustain the courts.

I have requested Quartermaster and Commissary General Miller to deliver this letter to you, and to acquaint you, more fully than is practicable in a written communication, with the present condition of affairs in the military service.

Truly and respectfully, your most obedient,

ISAAC I. STEVENS,
Governor of the Territory of Washington.

Hon. F. A. CHENOWETH,
Judge of the Northern District.

F.

United States *vs.* Charles Wren, Lyon A. Smith, and John McLeod.

Charge: Giving aid and comfort to the Indians with which the United States are at war. Before J. M. Batchelder, United States commissioner, third judicial district, Washington Territory.

W. W. DeLacy having made oath against the defendants named, as will appear by the affidavit filed herein, in words and figures following, that is to say:

"W. W. DeLacy personally appeared before me, this 29th day of May, A. D. 1856, and made the following affidavit: That Charles Wren, Lyon A. Smith, and John McLeod, between the 1st day of October, 1855, and March, 1856, as he verily believes, were in the habit of giving aid and comfort to the Indians with which the United States were at that time at war; he therefore prays that said charge may be inquired into by the court.

W. W. DELACY.

Subscribed and sworn to before me, this 29th day of May, A. D. 1856.

F. A. CHENOWETH, *Judge.*

And the said judge (F. A. Chenoweth) having ordered a warrant to issue, directed to the United States marshal of said Territory, for the arrest of said Charles Wren, Lyon A. Smith, and John McLeod, returnable before James M. Batchelder, United States commissioner in and for the third judicial district of said Territory; and thereupon, and before the issuing of said warrant, the said Charles Wren, Lyon A. Smith, and John McLeod, did give themselves up to the said marshal, and duly appeared before the said commissioner, attended by their counsel. And now, Saturday, May 31, 1856, the affidavit, filed herein, is read to the said defendants, and a copy of the list of witnesses to be examined on the part of the United States is served upon the defendants. And it appearing to the commissioner that the United States district attorney of the Territory was not present, Victor Monroe, esq., was appointed to act as district attorney *pro tempore*.

Archibald Taylor produced and sworn.

Do you know anything of the defendants having committed the crime charged?

Answer. I do not.

Lieut. Silas B. Curtis (of Captain Maxon's company Washington Territory volunteers) produced, sworn, and examined.

Do you know these defendants?

Ans. I do.

Were you at the house of either of these defendants on Christmas night?

Ans. I was not.

Do you know, of your own knowledge, of either of these defendants having aided the enemy?

Ans. I know nothing but circumstantial evidence.

State what.

Ans. On the 20th of March I went up there, to McLeod's, with a wagon. Saw a potato hole there freshly opened, and moccasin tracks near it. McLeod was not there. Saw him at Murray's; spoke to him. Asked him if he staid at his place. He said he staid at the barn; he said he knew of no Indians about there. We staid thereabouts until Mr. McLeod was arrested. Guns were occasionally fired about McLeod's house. Saw McLeod go into the timber several times. After his arrest, the next day, hooting and the report of a gun was heard in the direction of the timber.

When were those guns fired, and do you know who fired them?

Ans. I do not know. It was between the 20th of March and the 1st of April he used to go into the timber.

What conclusion did you form as to the communication of McLeod with the Indians?

Question objected to by defendants, and objection sustained.

Joseph Thibeau appeared, and was excused from further attendance, at the request of the district attorney.

John Swan appeared, and was excused from further attendance, at the request of the district attorney.

There being no further witnesses in attendance, upon the application of the district attorney, adjourned until Monday morning, the 2d June, at 9 o'clock.

MONDAY, *June* 2, 1856.

Met pursuant to adjournment.

Elwood Evans, esq., appeared and filed a certificate of his appointment, by Hon. F. A. Chenoweth, judge, &c., to represent the United States in the present examination.

William Clute produced, sworn and examined. State what you know of this matter. Charles Bell and myself went from camp on Christmas to go to Sandy Smith's; no one there; Lyon A. Smith is the man I mean; he is known everywhere as Sandy Smith; went to Mr. Murray's; Mr. Murray was lying on the porch with his feet frozen. Wren, Sandy Smith, Ross, and Bell, with us, went down to Smith's. While there, Wilson and another man came in. Soon an Indian came, Winyear by name; came for "*cultus;*" had no gun; had a green blanket; said he was alone. I went out; saw other Indians on horseback. Went in; saw Winyear putting money in a purse; told Wren we ought to arrest this Indian. He said he thought it unsafe, as they were without arms and the Indians were armed. Went to Charles Wren's and stopped over night. In the morning saw John McLeod; he said Indians came to his house and he gave them some potatoes.

Peter Butler produced, sworn and examined. I was at work at Wren's; I heard a party of Indians coming, as I thought; I told Mr. Wren so. We armed ourselves; soon some one knocked at the door. Wren asked who it was; Indian answered Slackamas; I advised Wren to open the door. Wren did so. Slackamas and others came in; said Leschi wished him to talk to the *Tyee* about peace. They said they did not desire the friendly Indians to come to their camp, as they could not believe them.

Dr. William F. Tolmie produced, sworn and examined. State what you know, of your own knowledge, about this charge against these prisoners. I know that Mr. Burge, one night last winter, came to my house for a horse to go to Steilacoom to let Captain Keyes know that Indians had been to Mr. Smith's. In February last, Mr. McLeod came to tell me that Leschi had left his house that morning and desired him to come to me; I do not know how long he was there. Leschi desired peace, and wished McLeod to say that he had always been friendly to the whites. Leschi wished me to go out with McLeod to see him, but revoked the wish through fear that soldiers would come. While he was waiting, Mr. Wren came in and said that Leschi and others had been at his house and desired peace. Mr. McLeod went to Steilacoom with me to tell the officers at the post. I heard from Mr. Burge that Indians had been at Mr. Smiths. Mr. Burge said merely that the Indians had been there, and I inferred from his conversation that Wren, Smith and McLeod wanted aid from Steilacoom. Our shepherds of the Puget's Sound farms were out in that region, guarding their sheep, and were not molested. Mr. Murray was taken as an American, and lived there. McDonald, who lived at McLeod's, and now lives at Victoria,

Vancouver's Island, said to me that McLeod had offered him twenty-five dollars to report these Indians to the post at Steilacoom.

Isaac W. Smith, acting secretary of the Territory, produced and sworn. State what you know of your own knowledge in regard to these defendants. I was sent by the governor to order these men in from their claims. Sandy Smith remarked he thought it was hard to drive him from his claim. After arriving at Olympia I asked him, Smith, if he would shoot an Indian if he saw one. He said no ; that he desired to let the Indians alone if they would him. The day I went out from Olympia, the body of Northcraft was found, and I saw it.

I think Smith told me he saw the Indians who had been supposed to have murdered Northcraft. When I was ordered out, I was told to take a large force on account of the danger from Indians.

Cross examined by defendants. Mr. Northcraft was killed near Yelm prairie, ten or twelve miles from the residence of these defendants. Mr. White near Olympia. Captain Ford and Mr. Goswell told me they had traced the Indians in the direction of the country in the neighborhood of Wren's, Smith's and McLeod's.

Henri Smith sworn. I know the prisoners at the bar. I saw an Indian at Sandy Smith's house on Christmas day. I do not know that they gave them anything. Mr. Smith asked the Indian where he came from ; he said from the Puyallup. He asked the Indian what he wanted ; he said he thought Sandy Smith was at Nisqually and not living at his place. Mr Smith asked him what he wanted if he thought no person was living there ; he said he was only looking around. I left Smith's and went over to Murray's. McLeod came next morning and said some Indians had been at his house the day before ; he said Leschi was there. This was the morning after Christmas. I thought they came to steal whatever they could. He was there when I left. This Indian was reported to be one of Leschi's band. McLeod said he offered a man twenty dollars to go into Steilacoom and report the Indians there, and he was afraid to go. I do not know of any Indians having visited Wren. McLeod told me after that, that some Indians came there expressing a desire to make peace. These defendants were not disturbed. When Sandy Smith left his house was broken into.

Peter Wilson, produced, sworn and examined. I know these defendants. I saw one Indian at Smith's house on Christmas day, an old Indian called Wingear ; said he came from Puyallup ; he said he thought Smith had moved to Nisqually and came to see. I left him there. I know nothing else, having lived at Steilacoom.

Charles H. Bell, produced, sworn and examined. I know the defendants. Do you know of these men, or either of them, having given any information, food or other aid to the hostile Indians? I know nothing of the matter. I belong to Captain Maxon's company. I was living at Mr. Wren's. I was arrested with Mr. Wren. Saw Mr. Smith arrested. Saw nothing at Mr. McLeod's. I lived at Wren's twenty-five days. Saw no Indians there during that time. I belonged to Captain Wallace's company. I was at Mr. Smith's on Christmas and saw Indians ; there were more than five in number there, who came in the night and stopped some five minutes ; I did

not know either of them. The Indians spoke in their own language and I could not understand what he said. The Indian came in, lighted his pipe, and talked with Mr. Smith's wife, an Indian woman, and left. Sandy Smith was there, but said nothing. I know nothing of Indians having visited McLeod's house. Never heard McLeod say anything about the matter. I have stated all I know on the subject.

The district attorney here gave notice that he had examined all the witnesses which were in attendance, and asked for an alias subpœna to the marshal for the following persons, to wit: William Campbell, Mari Hagit, George Gallagher, William Legg, F. Gravaille, James Burt, William Goddard, Gordon O. Taylor, and William Lacken, which was issued returnable to-morrow, Tuesday morning, at 10 o'clock, and then adjourned until Tuesday morning at 10 o'clock.

TUESDAY, *June* 3, 1856.

William Campbell produced, sworn, and examined: I know nothing of my own knowledge in regard to either of these parties having afforded *aid* and comfort to the Indians; nothing but what I have heard at camp or from Indians; was at Wren's house and at McLeod's; saw Indian tracks back of McLeod's, on a little prairie, say three miles distant; the Indians had killed a beef; it was in the latter part of March, and the beef had been killed some four or five days before—in fact some of the meat was still there.

That country would not be safe for me; hostile Indians were found within a few miles.

A camp of them was found about six miles from there. It appears that the Indians were travelling there, backwards and forwards all the time. The Indians had stolen horses on Yelm prairie from Longmires and Braie's. By their tracks we followed them up—they crossed a creek and the water was still riled. We soon after found a horse which they had left. We were now going from the locality of these men's places. When we returned, these men were prisoners of the military—I should call this hostile country—I mean where they lived. I have seen them on their claims from time to time when I deemed it hostile country.

John McPhail produced, sworn, and examined.—I was at McLeod's house on Christmas night. An Indian came in, and, soon after, others—nine in all. One always talked. McLeod asked the Indian about the way the war began—what occasioned the beginning. He said they (the whites) wanted to take the chief up to Olympia, and keep him there; they did not like that, and so they began the war. They were there more than two hours. There were four of us there—Jesse Varner, Angus McDonald, McLeod, and myself. I made out nine Indians. They came about twelve o'clock at night. We were playing cards; McDonald went to the door to get some fire-wood, and the Indians met him at the door. McDonald is now at Vancouver's island; he went there in January. We stopped playing cards while they were there. The Indians did no harm there, and went off. They stole nothing—I never heard of it. I was not present, or do not know of any other visits by Indians.

(*Thomas Headley* sworn upon *voir dire*.—I know Jesse Varner, and know that he is not now a resident of this Territory; he, to the best of my belief, now resides in Oregon, and does not intend to return to this Territory.)

George Gallagher produced, sworn, and examined.—I was one of the party who warned these prisoners in; I had charge of half the company; I was present at Mr. Smith's place; I mean now the first warning—immediately after the murder of White and Northcraft. It was some time about the middle of March—say from the 10th of that month. I was at Smith's house before that time. He stated, in my presence, that a party of Indians had passed that way on the morning after the murder of White, and that they crossed Muck creek, and pointed out to me the place of their crossing. When he saw the party, he had supposed they were volunteers, and went towards them to give them information as to the best crossing; he had not gone far before he saw they were Indians, and that they knew the crossing as well as he. They rode up to him. I think he said there were eleven in the party. They had a blue horse they were leading, and on one or more of their horses they had little packs, which he said he took to be Northcraft's sacks for oats. He stated, also, that the Indians said it was White's horse, and that White was killed. This occurred before they were warned in. We told Smith that they were to be warned in. This is not the order which was executed by me—secretary, Isaac W. Smith. This was the expedition in charge of Mr. Doty, who was detained at Steilacoom. Smith stated that he started for camp immediately after the Indians left him—to both Camp Montgomery and Fort Steilacoom. On my getting to camp that night, Mr. W. P. Wells told me that Sandy Smith had been there, and given the information he said he would do.

Mr. Wren, Mr. Smith being present, asked me at Steilacoom, after they came in, what my advice would be about their going back to their claims. I told him it would be unwise to return without permission of the governor. I thought he was liable to be shot by some of the volunteers. He then asked, What can we do? He wanted to get in his crops and, I think, some produce.

I proposed their organizing a company to report to Governor Stevens, and add to their numbers others above suspicion to make up the necessary force, to go to the claims of each other until their crops were all in. He expressed his entire willingness in the plan suggested.

The whole country at that time was in a state of war and the settlement abandoned. There were many signs of Indians in this locality. I was one of a guard to protect wagons. We deemed a guard to be necessary. After conducting the wagons to a safe point, as we thought, we left to go to Mr. Smith's house. We met Mr. Wren. He told us if we wished to find Indians, we could find them at a point of timber to which he pointed; he thought we could find them there. He was alone looking for horses. He told us that they had run a man, who was after Murray's cattle, into a house. Instead of hunting the Indians, we immediately struck for the wagons. At the time I speak of, these men and their families were on their claims. A few days after, I saw Mr. Smith there.

It appearing by the return of the deputy United States marshal that he had served the alias subpœna issued on the 2d of June, and returnable this day, and that Francis Gravaille, Mari Haguet, and William Legg had been duly served therewith, and did not appear as therein summoned, on motion of the acting United States district attorney, *it is ordered* that a writ of attachment be directed to the United States marshal to take the said persons and bring them forthwith before the commissioner; and it appearing that the marshal would require till 1 p. m. of Wednesday to serve the said writ, the commissioner then adjourns the examination until Wednesday, the 4th of June, at 1 o'clock p. m.

WEDNESDAY, *June* 4, 1856.

WILLIAM LEGG produced, sworn, and examined:

I was at Mr. Wren's house in April last. On Christmas day last I saw ten Indians on the Canadian prairie at Le Tour's house. He is a Canadian now at work for Dr. Tolmie. It is four or five miles from Wren's. Among those Indians was Leschi, Lulu and Slackamas. These were all I knew. I talked with them. I was lying in bed, and they broke open the door and rushed in the house. They told me they wished to make a treaty and did not wish to fight at all. They stayed above an hour. This was between eight and nine o'clock at night. I have been at Wren's house and have never seen any Indians there. The Indians told Le Tour that they were coming into Elk Prairie if a treaty was not made, and that they were going to give the whites a fair fight. This is all I know of the matter.

Wesley Gosnell produced, sworn, and examined.—I know of nothing except what friendly Indians have told me.

By the return of the marshal this day made, it appearing that Mari Haguet and Francis Gravaille could not be found, the district attorney here closed on the part of the United States.

And now, on motion of the acting United States district attorney, it is ordered that the defendant, Charles Wren, be discharged from the further custody of the United States marshal on the charge preferred in the affidavit herein filed; and that said defendant be allowed to go hence without day.

And, after argument of counsel being had, the commissioner held the matter under advisement, as regards the two defendants—John McLeod and Lyon A. Smith, and then adjourned until Thursday morning the 5th of June, at 9 o'clock.

THURSDAY, *June* 5, 1856.

And now, June 5, 1856, after mature deliberation upon the foregoing evidence, and the arguments of counsel herein had, it is ordered by the commissioner that the said John McLeod and Lyon A. Smith be discharged from the custody of the United States marshal, on the charge preferred in the affidavit herein filed; and that said defendants be allowed to go hence without day.

Counsel for defendant calling the attention of the commissioner to

the fact that the defendant, Lyon A. Smith, is called Sandy Smith throughout this testimony, a note of this fact is ordered to be spread upon this record.

Ordered, That the United States marshal pay to each of the following named persons the sums set opposite their respective names, for their attendance, and for the number of miles, respectively, travelled by each, in coming to and returning from court; said persons having attended this examination as witnesses on behalf of the United States, that is to say:

Names.	Amount due.	Days' attendance.	Miles travelled.
Archibald Taylor	$3 75	1	20
Silas B. Curtis	3 75	1	20
Joseph Tebo	6 75	1	60
John Swan	3 75	1	20
William Clute	3 75	1	20
Isaac W. Smith	6 75	1	60
Henri Smith	4 50	2	.....
Peter Wilson	4 50	2	.....
Charles H. Bell	6 00	2	20
William Campbell	3 75	1	20
John McPhail	2 25	1	.....
George Gallager	9 00	2	60
William Legg	3 75	1	20
Wesley Gosnell	6 75	1	60
W. F. Tolmie	5 40	2	12
Peter Butler	4 50	2	.....

Ordered, That Victor Monroe, esq., be allowed for two days' necessary attendance upon this examination as acting United States district attorney, to wit: May 31 and June 2, 1856.

Ordered, That Elwood Evans, esq., be allowed for four days' necessary attendance upon this examination as United States district attorney *pro tempore*, to wit: from the 2d day of June to the 5th day thereof, inclusive.

Ordered, That the United States marshal pay to Albert G. Balch the sum of ten dollars for the use of a room in which this examination was held.

Ordered, That the United States marshal be allowed for attendance upon this examination, and for other services, the sum of seventy-nine dollars and ninety-five cents.

I certify that the foregoing is a full and complete record of the evidence, orders, and proceedings had before me in the matter of the United States *vs.* Charles Wren, Lyon A. Smith, and John McLeod, charged upon complaint of W. W. DeLacy, with giving aid and comfort to the Indians now at war with the United States.

And the commissioner then adjourned the said examination *sine die*.

Given under my hand, at Steilacoom, in the county of Pierce, in the third judicial district of the Territory of Washington, this fifth day of May, A. D. 1856.

J. M. BACHELDER,
U. S. Commissioner, &c.

Chief Justice Lander to Mr. Marcy.

OLYMPIA, *June* 7, 1856.

SIR: In my former communication from Camp Montgomery I referred to the want of the necessary papers to substantiate the statements there made. I now forward copies of the letter of Hon. Francis A. Chenoweth to me, as to my holding the term of the court at Steilacoom; of my letter to Governor Stevens, from Steilacoom, as to revoking martial law, and his reply. I also transmit the record of the proceedings in the case of Wren *et als.*, petition for writ of *habeas corpus*; a copy of the order for the seizure of Judge Lander, directed to Captain B. Miller; and a copy of the order, directed to Lieutenant Colonel Shaw, releasing me from imprisonment; and a copy of the proclamation abrogating martial law, dated the 24th May. In this connexion, as I have stated the fact that a military commission was in session, I learned that on the 23d that commission decided in substance, on a plea to the jurisdiction, that they had no power to try any one under the charge of giving aid and comfort to the enemy.

As no other proof is at my command, I forward as corroborative of my seizure, and that of the clerk, at Steilacoom, while engaged in holding court, the vindication of Governor Stevens, and call your attention to page 7, and the paragraph commencing "The undersigned having come to the conclusion that martial law was indispensable to protect, etc., determined to enforce it by the arrest of the judge and clerk;" as to the manner, I refer to my former statements.

As the same page contains an italicized sentence, by which an insinuation is attempted to be made against my judicial character, which I much regret a gentleman occupying so high a station should have condescended to have made unnecessarily, I refer, as explanatory of the reason why the important cause of the United States *vs.* Moses was mentioned in my letter to the governor, to the enclosed letter from the gentleman then acting as United States district attorney, and would also refer to a letter from Elwood Evans, esq., one of the counsel on the other case mentioned in the vindication, which letter he informed me was prepared and forwarded to the department while I was held at Camp Montgomery, and I presume is now on file. If any further or fuller explanation is desired, if made known to me, it will at once be forwarded.

The remainder of the vindication demands no notice from me; but I do not wish to be considered as endorsing the statements therein.

In closing my present history of these transactions, I have only to state, that on the 23d instant a writ of *habeas corpus*, ordered to issue by Judge Chenoweth, on petition of Frank Clark, was served on Lieutenant Colonel Shaw, but refused to obey the writ. On the 25th I was informed by the officer in command that I was no longer in custody; that martial law had been abrogated, and a horse was placed at my disposal. After my arrival at Steilacoom, where I was detained two or three days from illness, I was informed by Judge Chenoweth that the three men that had been on trial before a military commission were brought before him, upon an affidavit of W. W. De Lacy,

one of the commissioners, charging them with treason, and that they were no longer held in custody by the volunteers, by order of Governor Stevens. The final action of the commission on the new charges and specifications I do not state, as I have only heard it generally spoken of.

On my return to Olympia several days were allowed to Governor Stevens, had such been his wish, to deliver himself up to the marshal, in obedience to the *alias* writ of attachment, in the attempt to serve which the marshal and his bailiffs had been forcibly resisted. This not being done, the marshal was directed to notify the governor that he would make a return of the writ before the judge at ten o'clock on Monday, the 2d day of June. At that time Governor Stevens appeared, and, in reply to a suggestion, stated that one of his counsel was absent, and that he would be for three weeks pressed by important public business. On the next day the time for the hearing on the attachments was set down for the first Monday of July; and it appearing by the marshal's return that several persons had not only refused to assist in the service of the writ, but had also assisted in forcibly resisting its service, attachments were ordered to issue for them, returnable at the same time.

As three of the five persons for whom the writ of *habeas corpus* had been issued were in the custody of the civil authorities at that time, the other two having been released by Governor Stevens without being put on trial, there seemed to be no objection to granting all the time asked for; the only question being in reference to the contempt.

I have, for the present, closed the account of my connexion with these transactions, and the department is in possession of all the documents it is in my power to furnish.

I stated in my former letter that the number of persons for whom the writ of *habeas corpus* was sued out was *seven*. I find, on looking at the petition since my return, that there were but five.

As I have once before stated, I have no desire to make comments. The course that my sense of duty and the law compelled me to take, as a judicial officer, certainly not a pleasant one, is stated. As to its being a proper one I can entertain no doubt.

I wish again to call your attention to the fact that there was no want of action on the part of the civil authorities, nor want of power, had they not been interfered with by military force.

If proper returns had been made to either of the writs of *habeas corpus* these men charged with treason would have been brought within the power of a committing magistrate. If the United States district court for the third judicial district, sitting at Steilacoom when the grand jury had been empanelled, had been suffered to proceed, these men, if indicted, would have been put upon their trial before the only court legally empowered to try them.

If mob violence had been feared, Lieutenant Colonel Casey, who had once received these men, at the request of the executive, as prisoners, would not refuse to hold them when committed by the proper officer, or when held to answer to an indictment charging them with treason.

But it is my duty to state, that in enforcing obedience to any order

that may be made in these cases of attachment, there may be some difficulty. The hearing is at Olympia, where the marshal has already made two returns of forcible resistance to process, and where a strong feeling has always existed against the persons originally seized by Governor Stevens; this feeling has extended with some to the defence of all the acts of that officer, from a misapprehension of the law, and from a belief that every interference on the part of the civil authorities, by the issue of the writ of *habeas corpus*, was not only illegal, but calculated to embarrass the governor, and tending indirectly to prejudice all appropriations for the payment of the war debt.

This feeling is temporary, and will, I believe, yield in time to a clearer and calmer view of the whole matter. Should it, however, now be taken advantage of by any of the parties to the attachment cases, by refusing to obey any order of the court, it is doubtful if the marshal can enforce obedience to it unless assisted by more force than he can there obtain.

I hope, however, that this will not be the case; and although, in a moment of excitement, men may have resisted the officers of law, and the executive may have thought his course legal and justifiable, yet that they will, should occasion call for it, yield obedience to the law and comply with whatever order may be made.

I am, sir, with respect, your most obedient,

EDWARD LANDER,
Chief Justice Washington Territory.

Hon. WM. L. MARCY,
Secretary of State.

Judge Chenoweth to Judge Lander.

WHIDBY'S ISLAND, *April* 30, 1856.

MY DEAR JUDGE: I am still about as I was when Mr. Chapman left, except that my cough is a little easier, but I still have considerable fever, no appetite, or strength. There is no show for my leaving home right off. I am compelled to ask you to do me the favor to hold my court at Steilacoom, and can only say that I will hold myself in readiness to do like favors should an opportunity [occur.]

Should be glad to hear from you at Seattle.

Yours, truly,

F. A. CHENOWETH.

Lieutenant Colonel Lander to Governor Stevens.

STEILACOOM, *May* 5, 1856.

SIR: Lieutenant Colonel Shaw, on my arrival here, informed me that martial law was proclaimed in Pierce county, and that he would

be compelled to prevent the holding of the term of court under your instructions. Mr. DeLacey also told me that it was not your wish to interfere, if possible, with the trial of causes at this term, and proposed, from you, that the court should be adjourned for one month, until such time as would be more suitable than the present to hold the term.

There is no law authorizing any adjournment of this term; it must be held this week, or not at all. There are some important causes to be heard, and one suit in favor of the United States against the former collector at Puget's Sound, which ought to be tried.

I therefore adjourned until Wednesday morning, at nine o'clock, at which time, Mr. DeLacey tells me, he thinks he can return, and when there will be time to get through the greater part of the business.

There was imminent danger of collision between the civil authorities and the military. Nothing could be more disastrous than this. As a strict sense of duty alone could induce me to hold the term, I have not thought proper to risk the lives of any one.

I would suggest to you that, instead of continuing for a month or two more martial law, that you abrogate it at once, and thus prevent any further feeling upon the point, especially as the present condition of the country seems not to require it as strongly as before, and it can make no difference in regard to what has been already done.

I am, with great respect, &c., yours,

EDWARD LANDER.

Governor ISAAC I. STEVENS.

Governor Stevens to Lieutenant Colonel Lander.

EXECUTIVE OFFICE, WASHINTGON TERRITORY,
Olympia, May 6, 1856.

SIR: Your two communications of the 4th and 5th instant have been received.

I beg leave respectfully to express the opinion that the commission of lieutenant colonel, by appointment of acting governor Mason, was not vacated by my arrival. There is no such thing as a commission personal to the individual for the time being performing the executive functions. You could only cease to be invested with the functions attached to your commission by resignation or removal.

Under the peculiar circumstances of the case, I shall decline, for the present, to accept the resignation of your commissions.

In regard to adjourning court, I have examined the law, and find no difficulty in your adjourning to any given time within the interval between this and the next term of the court. The law states that the district court for the county of Pierce shall be held "on the first Monday in May and November." If the strict literal view is taken of the wording of the statute, the court can only sit one day, and that is on the said first Monday.

The power to adjourn over to Tuesday or Wednesday involves the power to adjourn over to any other time—say to the first Monday in June. It rests wholly within the discretion of the judge.

I will therefore suggest that you adjourn the court until the first Monday in June, before which time I am quite sure the necessity for martial law will have passed away.

Truly and respectfully, your most obedient,

ISAAC I. STEVENS,
Governor of Washington Territory.

Lieut. Col. E. LANDER,
Steilacoom, W. T.

United States of America, *ex relatione* Lyon A. Smith, John McLeod, Charles Wren, Henry Smith, and John McPeel
vs.
Isaac I. Stevens.

Sur petition for writ of *habeas corpus*. To Hon. Edward Lander, chief justice Washington Territory, and judge Washington Territory district court of the second judicial district. At chambers.

And now, May 12, 1856, said petitioners, by their counsel, exhibiting their complaint and petition, in words and figures following, that is to say:

TERRITORY OF WASHINGTON, *Thurston county:*

To the Hon. Edward Lander, judge of the district court of the United States for the second judicial district of the Territory of Washington: The complaint and petition of Lyon A. Smith, John McLeod, Charles Wren, Henry Smith, and John McPeel, of Pierce county, Washington Territory, respectfully showeth: That they now are, and for many days last past have been, confined and holden in imprisonment, without law or right, in Olympia, in said county of Thurston, by Isaac I. Stevens, governor of Washington Territory, charged, as is alleged by proclamation of said executive, with the supposed crime of "affording aid and comfort to the enemy." Wherefore, they pray your honor to issue the writ of *habeas corpus*, to bring your petitioners, together with the cause of their caption and detainer, before your honor, to the end that what appertains to justice may be done. And your petitioners will ever pray, &c.

WALLACE, KENDALL & CLARK,
Petitioners' Attorneys.

MAY 12, 1856.

—

TERRITORY OF WASHINGTON, *County of Thurston, ss:*

Henry Smith and John McPeel, two of the within named petitioners, being duly sworn according to law, do declare and say, that the facts contained in the within complaint and petition are true, so far

as they know of their own knowledge, and, so far as is derived from the information of others, they believe them to be true.

HENRY SMITH.
his
JOHN + McPEEL.
mark

Subscribed and sworn to before me, this 12th day of May, 1856.

B. F. KENDALL, [L. S.]
Notary Public.

—

And thereupon the said judge did make an order in words following—that is to say:

TERRITORY OF WASHINGTON,
Johnston county, 2d judicial district, ss:

Whereas I am informed, by the petition of Lyon A. Smith, John McLeod, Charles Wren, Henry Smith, and John McPeel, that they now are, and have been, confined and holden in imprisonment by Isaac I. Stevens, governor of Washington Territory; and whereas the said persons pray the issuing of the writ of *habeas corpus* in their behalf, you are hereby ordered to issue the said writ of *habeas corpus*, directed to the said Isaac I. Stevens, commanding him to bring before me, at Olympia, on Wednesday, the 14th instant, at 4 o'clock p. m., the bodies of said Lyon A. Smith, John McLeod, Charles Wren, Henry Smith, and John McPeel, together with the cause of their capture and detainer, that the legality of the imprisonment may be inquired into and justice done. And be you then and there.

Given under my hand and official signature this May 12, 1856, in chambers.

EDWARD LANDER,
Chief Justice and Judge 2d Judicial District.

WILLIAM W. MILLER,
Clerk U. S. District Court, 2d Judicial District.

And thereupon the writ of *habeas corpus* issued, directed to Isaac I. Stevens, governor of the Territory of Washington, returnable before the honorable Edward Lander, at chambers, on Wednesday, May 14, 1856.

And now, May 14, 1856, at 4 o'clock p. m., come the relators by their attorneys, and the said Isaac I. Stevens not appearing to make return to the said writ of *habeas corpus*, the following order of notice is made by the honorable Edward Lander, judge as aforesaid:

"Ordered that the United States marshal for the Territory of Washington be directed to notify Isaac I. Stevens, &c., that Judge Edward Lander is now at chambers, ready to receive the return of the writ of *habeas corpus*, made returnable this day, the 14th of May, 1856.

"Given under my hand, at chambers, at Olympia, this 14th day of May, 1856.

"EDWARD LANDER."

And the United States marshal did serve the said notice, and endorsed thereon his return, in the following words:

"Served on the 14th day of May, A. D. 1856.

"GEO. W. CORLISS,
"*U. S. Marshal for Washington Territory.*"

And now relators, by their attorneys, move the court to grant a rule upon the said Isaac I. Stevens, governor, &c., to show cause, if any he have, why a writ of attachment should not issue against him for a contempt in not making a return to the writ of *habeas corpus*, returnable this day before Honorable Edward Lander, judge, &c., at chambers; and it appearing to the satisfaction of the court that said writ of *habeas corpus* had been duly served upon the said Isaac I. Stevens by the United States marshal, as appears by his return in words following: "Came to hand the twelfth day of May, A. D. 1856; served the original, of which this is a true copy, personally upon Isaac I. Stevens, governor of the Territory of Washington, at the executive office, at Olympia, on the day and year aforesaid, at 7 o'clock, p. m.

"GEO. W. CORLISS,
"*U. S. Marshal, Washington Territory.*"

Said rule is granted, returnable Thursday, May 15, 1856, at 12 m., and the United States marshal is ordered to serve said rule upon the said Isaac I. Stevens, governor, &c. And now, May 15, 1856, at 12 o'clock, m., come the relators, by their attorneys, and the said Isaac I. Stevens comes not; and, on motion of the relators that the said rule be made absolute, and the writ of attachment issue, and it appearing to the satisfaction of the court that the United States marshal had served the said rule, as will appear by his return herein, in the following words: "Came to hand on the fourteenth day of May, 1856; served same day by placing a copy hereof in the hands of defendant, Isaac I. Stevens.

"GEO. W. CORLISS,
"*U. S. Marshal for Washington Territory,*"

It is therefore ordered that said rule be made absolute, and that a writ of attachment issue, returnable instanter.

And thereupon the writ of attachment issued, directed to the United States marshal for the Territory of Washington; and afterwards, on the day and year aforesaid, the said marshal made the following return: "Came to hand the fifteenth day of May, 1856. I have attempted to serve the same by seizing the body of the defendant, but he forcibly resisted. I therefore summoned bystanders, who refused to assist me in the arrest, on the day and year above written.

"GEO. W. CORLISS,
"*U. S. Marshal for Washington Territory.*"

And thereupon, on motion of relators, it is ordered that an *alias* writ of attachment issue to take the body of Isaac I. Stevens, directed to the marshal.

The hearing was here interrupted by the entry of armed men, and the judge and clerk were seized.

And now, June 2, 1856, at 10 o'clock, a. m., the United States marshal returned into court the *alias* writ of attachment, upon which was endorsed the following return: "Came to hand on the fifteenth day of May, A. D. 1856. I attempted to serve the same day, but was forcibly resisted by men in the office of the governor, the defendant, to the number of nine.

"List of those who resisted the writ: A. J. Baldwin, James Doty, Joseph L. Mitchell, R. M. Walker, J. A. Brooks, A. J. Cain, Lewis Ensign, James Tilton, and C. E. Weed.

"On the second day of June, A. D. 1856, served this attachment by bringing into court the defendant, Isaac I. Stevens.

"GEO. W. CORLISS,
"*U. S. Marshal for Washington Territory.*"

And court adjourned until Tuesday morning, at 10 o'clock, June 3, 1856.

And now, June 3, 1856, at 10 o'clock, a. m., ordered that writs of attachment issue for A. J. Baldwin, James Doty, A. J. Cain, R. M. Walker, J. A. Brooks, Lewis Ensign, James Tilton, and Joseph L. Mitchell, who appear by the return of the marshal to have forcibly resisted the service of the *alias* writ of attachment, returnable on the first Monday in July, 1856, at 10 o'clock, a. m.

And court adjourned until the first Monday in July, 1856, at 10 o'clock, a. m.

I hereby certify the foregoing to be a full, true, and complete copy of the record of the proceeeings had, before the Honorable Edward Lander, chief justice of the Territory of Washington, and judge of the second judicial district of said Territory, in the above entitled cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States district court of the county of Thurston, in the second judicial district of said Territory, this seventh day of June, A. D. 1856.

[L. S.]

ELWOOD EVANS,
Pro W. W. MILLER,
Clerk U. S. District Court, second judicial district, Washington Territory.

EXECUTIVE OFFICE, TERRITORY OF WASHINGTON,
Olympia, May 15, 1856.

SIR: The Hon. Edward Lander, chief justice of the Territory of Washington and presiding judge of the second judicial district, having, in defiance of my proclamation of martial law of the 13th instant, proceeded to continue in the exercise of functions suspended by said proclamation even to the extent of issuing a writ of attachment commanding the marshal to bring my body before him, and thus restricting me of my personal liberty whilst in the exercise of my functions

as commander-in-chief in time of war, you will immediately arrest the said Chief Justice Lander; release him on his parole, in writing, that he will not, on the honor of a gentleman, proceed to exercise said suspended functions till martial law is revoked; or, in the event of his refusing to give said parole, you will take him to Camp Montgomery, and there deliver him over to Lieutenant Colonel Shaw, the military commandant, to be held for further orders.

In the performance of this duty, you are enjoined to exercise all your judgment and discretion; and, in the event of resistance, you will call upon the people to assist you in the enforcement of this order; and you will see to it that every possible respect is paid to the Hon. Edward Lander, and every liberty allowed, consistent with the attainment of the ends of this order.

Very respectfully, sir, your most obedient,

ISAAC I. STEVENS,
Governor and Commander-in-chief.

Captain B. MILLER,
Company I, 2d Regiment W. T. Volunteers.

EXECUTIVE OFFICE, TERRITORY OF WASHINGTON,
Olympia, May 24, 1856.

SIR: Martial law is now abrogated, and the proclamation will be issued in the morning. You will release Chief Justice Lander from custody.

Truly and respectfully, your most obedient,

ISAAC I. STEVENS,
Governor and Commander-in-chief.

Lieut. Col. B. F. SHAW,
Commanding 2d Reg't W. T. V., Olympia, W. T.

PROCLAMATION.

Whereas certain persons, charged with giving aid and comfort to the enemy in the existing Indian war, were arrested by my orders for the purpose of bringing them to trial before a military commission; and whereas, to prevent the execution of the designs of certain evil-disposed persons to take from the custody of the military the prisoners so charged, martial law was declared successively in the counties of Pierce and Thurston;

And whereas the persons charged have been retained in military custody, and have been brought before a military commission, and are now on their trial for the offence above mentioned; and whereas there is no longer any necessity for the existence of martial law in said counties: Therefore—

Be it known that I, Isaac I. Stevens, governor of the Terri-

tory of Washington, do hereby abrogate martial law in the said counties of Pierce and Thurston.

Given under my hand, at Olympia, this twenty-fourth day of May, in the year of our Lord, eighteen hundred and fifty-six, and the year of Independence the eightieth.

ISAAC I. STEVENS,
Governor of the Territory of Washington.

Vindication of Governor Stevens for proclaiming and enforcing martial law in Pierce county, Washington Territory.

The undersigned has had his attention called to a circular expressing the views of the bar and of the citizens of Pierce county in regard to his recent action as executive of the Territory in proclaiming and enforcing martial law in Pierce county.

At a public meeting of the said bar and of the citizens the course of the undersigned is pronounced despotic and unnecessary, and a solemn protest made against it as a most dangerous and unprecedented invasion of the rights of the judiciary, and as an act which called for the prompt interference of the national government.

The views of the said bar and citizens, as embodied in resolutions, are prefaced by a statement of the facts, going to show that there was scarcely even a pretence of a cause for the action of the executive in suspending the functions of the court.

This contains not only palpable errors of fact, but the whole paper is highly colored, and is calculated to give a wrong impression of the actual condition of affairs in that county.

The undersigned deems it therefore due to the vindication of his own official action to present the reasons and facts why, in his judgment, he was called upon by an overruling public necessity to proclaim and enforce martial law.

On the 3d day of April, 1856, martial law was proclaimed in and throughout Pierce county by the undersigned, for the reasons set forth in his proclamation in these words:

"Whereas, in the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion that certain evil-disposed persons of Pierce county have given aid and comfort to the enemy, as that they have been placed under arrest and ordered to be tried by a military commission; and whereas efforts are now being made to withdraw, by civil process, these persons from the purview of the said commission:

"Therefore, as the war is now being actively prosecuted throughout nearly the whole of said county, and great injury to the public will result, and the plans of the campaign be frustrated if the alleged designs of these persons be not averted," &c., &c.

What was the condition of the Territory and of Pierce county at the time of issuing that proclamation, and what had been its condition for months previously?

An Indian war had been raging, where neither age, sex, nor condi-

tion had been spared, whole families had been inhumanly massacred. alarm and consternation pervaded the whole Territory. The settlers of the Territory were in a state of siege, families living in block-houses with a few men, and a majority of the citizens in arms, actively pursuing the enemy in order to end the war.

There was, however, an exception as regards "certain evil disposed persons" of Pierce county. They remained in security on their claims, receiving the visits of the hostiles, furnishing them with provisions, giving them information, acting as their spies, and in every way furnishing them aid and comfort. These persons lived on the outskirts of the settlements, in position where the Indians had easy access to them, and on the line where were the depots of the military operations, and which was the base of the military movements.

There is grave cause of belief not only that these persons fraternized with the hostiles, but that they were the main original cause of the war, and that at a meeting last Christmas they determined to keep up the war, confident that they would be gainers by it.

All these are matters of public notoriety, and have been for many months. The attention of the undersigned was called to it immediately on his return by acting governor Mason, who expressed the judgment that at least they should be at once ordered in, and removed from the theatre of active operations.

His attention was afterwards called to it by that "veteran and energetic" officer, Lieutenant Colonel Casey, commanding the military district of Puget Sound, and who had been informed by an Indian prisoner from Leschi's camp that the movements of the troops had been communicated to Leschi by one of these "evil-disposed persons."

The undersigned was unwilling to resort to harsh measures unless an imperious public necessity demanded it, and he limited his action to calling the attention of the military to those men, and to direct that they be carefully watched.

The murders of White and Northcraft decided what was his duty in the emergency. These murderers had their hiding-places in the Nesqually bottom, and drew supplies from these "evil-disposed persons." They were met and greeted by them in friendship with the blood yet on their hands.

The undersigned accordingly determined to order them in as a preliminary step, and to execute this duty, he secured the services of a most prudent and efficient man, Isaac W. Smith, esq., the acting secretary of the Territory.

The order was executed with kindness and moderation. Several days were allowed to take away their effects. They had the choice of residence—Olympia, Fort Nesqually, or Steilacoom—and arrangements were made to furnish them with provisions.

So great was the public indignation at this time, that it was an indispensable measure of precaution in order to protect the lives of these persons from the justice of an outraged community.

The arrest of these "evil-disposed persons" had the most happy effect on the friendly Indians, who believed and knew that they had stirred up the war and confederated with the hostiles. The friendly In-

dians began to have confidence in an authority which treated *all* enemies as enemies, even though some had the skins of white men.

In defiance of these orders, these settlers returned to their claims, and re-established intercourse with the Indians. The military officers sent them in, stating that they had acted as spies and had paralyzed their operations.

Accordingly they were sent to the station at Steilacoom under charges, and Lieut. Colonel Casey received them.

It may be asked here, how was it that these men were able to keep up intercourse with the hostiles under the circumstances?

These men have Indian wives and families who have connexions in the hostile bands—fathers, brothers, and other near relatives—and so far as the undersigned is informed, they sympathize with them in the war. These "evil disposed persons" are mostly the retired servants of the foreign corporations in our midst, and they have a deadly antipathy to the dominant, that is the American, power here.

In connexion with these reasons of public necessity for proclaiming martial law, it will be pertinent to correct some of the mis-statements of the circular.

It is not true that Lieut. Col. Casey refused to receive the prisoners. He did receive them, but when the writ of *habeas corpus* was about to be issued, and the undersigned in consequence proclaimed martial law, he asked to be relieved of their charge, doubting whether the proclamation could relieve him from the obligation of obeying the requisitions of the civil authority.

Nor is it true, as stated in the circular, that all the persons under charges were at Olympia, a portion were in Steilacoom, and all the remaining persons ordered in were either at Steilacoom or Fort Nesqually, within the limits of Pierce county.

Nor is it true, as stated in the circular, that the Indians have been so far subdued, as that these persons could not communicate with them. The hostiles have infested the Nesqually bottom within the last fortnight, and they could have access to these settlers without much difficulty, whatever were the number of troops operating against them, unless each of these persons was under a constant guard, and his family under guard also.

These facts are well known to all persons acquainted with the topography of the country and the situation of the claims of these persons.

Nor is it true that the proclamation was sent only to a few military officers. It was posted up publicly at Steilacoom, and was known to every citizen of the county.

When the undersigned learned that a writ of *habeas corpus* was about to issue to free these "evil-disposed persons" from the power of the military, he determined to meet it by proclamation of martial law.

The writ of *habeas corpus* could not only be issued in favor of the persons in confinement at the station near Steilacoom, but also in favor of those on parole at Nesqually, Steilacoom, and Olympia. The result would have been to paralyze the military in their exertions to end the war, and to send into their midst a band of Indian spies and

sympathizers. There would have been at once a conflict between them, and lives would have been lost.

It is true, that since the proclamation of martial law a great change for the better has taken place in the condition of the war. Through the vigorous action of all the troops, regulars and volunteers, the Indians have been repeatedly struck, many have been killed and taken prisoners, and the hope is indulged that in a few weeks the war may be ended.

Yet every reflecting man must see that this is the critical period of the war, when it is to be determined whether the war can soon be ended, or whether the contest is to be continued another year. Within the last fortnight houses and barns have been burned in the county of Thurston. The Indians have announced their determination to lay waste the settlements. Those east of the Cascades have declared they would transfer the war to the Sound, a measure to be apprehended in view of the known fact that they have had the services of one band of sixty men, commanded by the son of the Yakima chief, Owhi. It is no time for the nefarious practices of Indian spies and sympathizers.

At this critical stage, therefore, the undersigned learned with great surprise that the court was to be held by Chief Justice Lander; and he was the more astonished at the reasons given by the chief justice in the letter from him to the undersigned, which is referred to in the circular.

The undersigned had given, as the circular states, orders to Lieutenant Colonel Shaw to examine the condition of things, and to advise him of the earliest practicable period it would be safe to revoke martial law.

The report of Colonel Shaw was, that it was indispensably necessary to *enforce martial law*. A letter from him will accompany this paper, giving his reasons therefor.

The reasons of public necessity for holding the court, as set forth in the letter of Chief Justice Lander and in the circular, though they do not touch the principle of the case, need to be referred to as illustrative of the spirit of the whole transaction. It is said that one of the cases was a suit of the United States *vs.* the former collector of Puget Sound, and that it ought to be tried. Now this case was originally brought before the courts of Thurston county, and a change of venue was had to Pierce county, in Judge Chenoweth's district, on sworn affidavits *that Chief Justice Lander was prejudiced and would not try the case fairly. The other most important case was changed from Thurston to Pierce for the same reason.*

As to the danger of collision which is referred to, it may be said that the event showed no such danger. The armed force was small. A great portion of the citizens of Pierce county are in the field against the enemy, and are well advised of the necessity of the step taken by the executive.

The undersigned did unquestionably suggest to Chief Justice Lander the adjourning of the court till June, at which time it was believed the necessity for martial law would have passed away, and he did venture the expression of the opinion that the power thus to adjourn the court was fairly to be implied from the wording of the statute

The undersigned having come to the conclusion that the martial law was indispensable to protect the lives of the citizens, for the reasons set forth in this paper, determined to enforce it by the arrest of the judge and clerk, which was done with moderation and decorum by Lieutenant Colonel Shaw.

It is simply a question as to whether the executive has the power, in carrying on the war, to take a summary course with a dangerous band of emissaries, who have been the confederates of the Indians throughout, and by their exertions and sympathy can render, to a great extent, the military operations abortive. It is a question as to whether the military power or public committees of the citizens without law, as in California, shall see that justice is done in the case.

And he solemnly appeals to the same tribunals before which he has been arraigned in the circular, in vindication of his course, being assured that it ought and will be sustained as an imperious necessity growing out of an almost unexampled condition of things.

ISAAC I. STEVENS,
Governor Territory of Washington.

OLYMPIA, *May* 10, 1856.

HEADQUARTERS, W. T. VOLUNTEERS,
Olympia, W. T., May 10, 1856.

SIR: I see by a printed circular, issued at Steilacoom on the 7th instant, that the following statement is given as having been made by me:

"About three days previous to opening court, Colonel Shaw, commanding the volunteer forces, who had received written instructions from Governor Stevens to enforce martial law until further orders—being directed at the same time to inform him, immediately, if in his opinion it would be no longer necessary, had written, by express, to the governor, stating that no occasion existed in the county for its continuance—informing him that important business would be before the court, and recommended that in consequence the proclamation be abrogated."

The reason that led the committee to make the statement is, that several days previous to the sitting of the court above referred to George Gibbs, one of the members of the bar, came to me and desired me to write to you, stating that there was important business to come before the court. Upon his statement I did preface a note to you, stating that martial law could be dispensed with.

But upon inquiry I was convinced that there was a strong desire to arrest the prisoners which you had summoned before a military commission for trial, and being satisfied that if martial law was not enforced, and the prisoners tried before a military commission, that great injury would result to the public service, and the confidence of my troops destroyed, in consequence of men being at large whom men believe to be the worst enemies to American citizens and the progress of the war.

I therefore concluded, that to serve the public good martial law should be enforced, even if it should be to the inconvenience of a few citizens who had business before the court, and did not send the note first written, recommending that martial law be revoked, but recommended that it be enforced.

I am, sir, very respectfully your most obedient,

B. F. SHAW,
Lieut. Col. Comg. Right Wing W. T. Vol.

GOV. I. I. STEVENS,
Commander-in-Chief Volunteer Forces.

OLYMPIA,
Washington Territory, June 7, 1856.

SIR: I wish to state to you that, in a conversation held with you some two or three days previous to the time of holding the district court in Pierce county, I remarked to you that from a conversation I had had with Simpson P. Moses, against whom a suit was pending in favor of the United States, I was well satisfied he would be willing to have the cause tried at that term. I was at that time acting United States district attorney, and doubtless you were led to refer to that among other causes for trial, in your communication to Governor I. I. Stevens, on the day of opening court, from my statements made to you in my official character.

Respectfully, your obedient servant,

B. F. KENDALL.

HON. EDWARD LANDER.

Judge Chenoweth to Mr. Marcy.

WHIDBY'S ISLAND, W. T., *June* 8, 1856.

SIR: I feel it incumbent upon me to make an official report of certain matters of fact that have lately transpired in this Territory. Of the proclamation of martial law in the counties of Pierce and Thurston you must have been fully advised long since through the press, and it is not necessary that I should detail them. You have also been advised, through the same medium, of the arrest and imprisonment of the chief justice, Edward Lander. As to the alleged cause for proclaiming martial law, that also appears fully in his excellency's several proclamations, vindication, &c. No other course is claimed or object intended but a suspension of the writ of *habeas corpus* in the case of some seven persons, whom the governor alleges are guilty of treason. I need not detail the matters connected with the arrest of Judge Lander, or other matters arising out of it, as these matters, at least so far as occurred in Pierce county, (a part of my district,) have been fully and, as I think, truthfully set forth by the members of the bar. The second arrest of Judge Lander was at Olympia; and should I undertake to report it I would have to rely upon the statements of others, and not what I saw or knew myself.

I was, however, at Olympia a few days since, and learned, from persons of high respectability, all the facts of the case. There appeared to be very deep disgust and mortification felt at the conduct of the governor, and with the exception of his clerks, staff officers, express men, his various employés in the civil, military, and Indian departments, all of which are very numerous, there appeared to be no one that justified or defended him. Several of his officers have resigned in consequence; and I learn from them and others that the idea is industriously circulated and impressed upon both officers, clerks, and soldiers, that they must stand by and see the governor out in it, right or wrong, or they will lose their pay.

When Judge Sander was arrested at Steilacoom, Pierce county, I was at home sick. The judge being taken away, and the grand jury left in session, I was immediately sent for, but I was not yet able to travel, and members of the bar represented the urgency of business, and especially a great desire to have some decision upon the great matter of excitement—*martial law*.

I at first determined to publish a circular, indicating what might be the views of the courts, and prepared one, but upon reflection determined not to publish it. I then addressed the same in substance to three or four of the members of the bar, in a letter which was published. I appointed the 24th day of May as the time for such business as could be transacted in vacation. I arrived at Steilacoom, the county seat, on the 22d, and found the people much excited, as they understood that I would be arrested as soon as I arrived. I afterwards learned that such would have been the case; but I was met by Captain Guthry, United States army, and taken immediately to his quarters at station, under command of Lieutenant Colonel Casey. Colonel Casey made me welcome at the post, told me that if I would remain there I should not be disturbed. I told him I would remain with him until the 24th, at which time I would open court at the court-house, as I had promised.

On the 23d applications were made for writs of *habeas corpus* for the body of Chief Justice Lander and others, then in confinement at Camp Montgomery, a few miles in the country. These writs were returned on the morning of the 24th at my quarters at the station; and as great anxiety was manifested to have a decision upon certain points touching martial law and matters arising out of it, and believing that it might be useful in quieting the intense excitement, I prepared an opinion before the opening of court, which was immediately published and circulated, together with the letter above referred to. I send you a copy of the opinion, and, although prepared in great haste, I hope the conclusions are mainly correct—although I would be happy to have it in my power to correct some of the phraseology and reasoning by which I arrived at the conclusions—yet it was the best I could do under the circumstances. After granting the attachment against Colonel Shaw, I prepared to go to the court-house to open court. I at that moment received a message from the sheriff, by his deputy, informing me that he had, as ordered by me, summoned a *posse* of fifty men; that they were all in attendance, and were armed with revolvers, and that Captain Curtis, of the volun-

teers, was then professing to act under the orders of Gov. Stevens, and assured the sheriff of his determination to arrest me; said that such were his orders. I am told that his conduct was not disorderly, but that some of his men declared that they would burn the town if they were interrupted or opposed in the execution of their orders. I immediately represented these things to Col. Casey, and told him I felt it my duty to use every precaution to prevent the shedding of blood, and asked him if he would not send down to the court-house a sufficient number of United States troops to prevent a conflict between my posse and the volunteers. He said he was anxious to remain neutral in the matter, as it appeared to be a quarrel between the executive and judiciary; but said he would go and see Captain Curtis and advice him not to interrupt the court, which he did, and very soon returned and told me that Captain Curtis had taken his advise and agreed not to disturb me. I immediately started to the court-house—met the volunteers on the way—they bowed civilly to me, and my court was held without interruption.

On the 26th, the marshal returned the attachment by bringing the body of Colonel Shaw before me; and, on his refusal to make the proper return, I committed him to prison and ordered that he remain in close confinement until he made the return. In the evening, the marshal informed me that Colonel Shaw was expecting a respite from the governor to arrive next morning. The next morning came, but with it came not the respite, but a letter from the governor to me, asking me if it was not my discretion to admit him to bail and dispose of the contempt by a fine; stating that he wished to send Colonel Shaw on an important expedition to the Indian country, &c., and informing me, at the same time, that he had "abrogated martial law." As this was the first symptom of returning good feeling towards the judiciary, and was so different from the haughty and dictatorial bearing previously held, I determined to see without delay what I could do, consistent with my duty, towards discharging Colonel Shaw; so I went immediately to the colonel's room and saw him. I found him reading a letter from the governor, and his temper was much changed; he was evidently much disappointed. I showed him the letter I had just received from the governor. He appeared to know what it contained without reading it. He immediately offered to turn the prisoners over to me, and to do anything he could do to purge the contempt. He said he had already ordered Judge Lander to be discharged. I told him to give me his parol of honor that he would appear at the next term of court, and abide by such judgment as might be made in his case for the contempt, and be discharged, which he did, and was discharged. On that evening, at 9 o'clock, we received the governor's proclamation "abrogating martial law," although it was dated 24th. It may have been written on the 24th, but it was not made public until the evening of the 26th, at Steilacoom, and I was assured that such was the case also in Olympia.

The prisoners Wren, Smith, and McLeod, were turned over to me by Colonel Shaw, and as there were a great number of witnesses to be examined, I directed the United States commissioner to take down the evidence in writing and make a full examination of the case; and

that, when the evidence was all in, I would assist him in his decision as to committing or discharging them. There were seven persons accused by the governor in the first place; but as there was no evidence against four of them they were discharged by the governor, and did not come to my hands. After being in the county of Pierce, and talking with the people, I am satisfied that there was no difficulty in proceeding against these men in the courts of law. The accused might well have doubted whether they could have a fair trial at the hands of an impartial jury; they well knew the dread that every citizen stood in of the Indians, and that any person even suspected of favoring the Indians could hope for nothing at their hands. No one believes that there was any necessity for martial law at that time; for at the time it was declared the Indians had been whipped and driven back. The regular troops had at that time been in quiet possession of all that portion of the country for some time, and it is not true, as stated in the governor's proclamation, that "the war was being prosecuted throughout nearly the entire county." There were no Indians in the county, or war being prosecuted within the county at that time, or for a considerable time previous. Upon this point men that are now on these farms, and were then, without fear, prosecuting their business, and officers that had scoured the entire county, all agree in the same opinion. I have since learned that Governor Stevens had promised Colonel Shaw a respite for any and all convictions that might be had against him for obedience to his orders, and that the respite was prepared, and one Miller, now a quartermaster under Stevens, and a plain, off-hand man, was called upon to serve it upon me and demand the release of Colonel Shaw. Miller said to the governor: "You can't do that; your pardoning power don't go to offences of this kind. I saw it tried in Iowa." On learning this, the governor reconsidered the matter, and sent the letter above referred to. This I learned from the marshal, and believe to be true.

There are at this time many good citizens, as well as a large part of those either directly or indirectly in his employ, and many of the soldiers under his command, that have no doubt of the full power of the governor to do all that he has done, and more, if he chooses to do it, and would at any time resist sheriffs or marshals in executing legal process, if ordered by any of the officials under the governor. All this is natural, and it must remain so until some action is had by the general government. The judiciary has received a dreadful blow, and one that has in a great degree prostrated it in this Territory—one from which it cannot recover without some timely action of the federal government.

I am, sir, very respectfully, your obedient servant,

F. A. CHENOWETH,
Associate Justice, Washington Territory,

WILLIAM L. MARCY,
Secretary of State.

Gibbs and Goldsborough to Mr. Marcy.

STEILACOOM, *June* 20, 1856.

SIR: Herewith we have the honor to enclose a memorial, undersigned, which was forwarded to one of the volunteer companies, (company A,) stationed in King county, Washington Territory, for signature. We are informed that it was sent to the captain of that company, Captain Denny, by Governor Stevens' quartermaster, at Seattle, and that Captain Denny laid it before his men stating that he would not sign it, but that they might do as they pleased. They all declined in like manner.

The paper is sent you, that you may understand the efforts that are making to sustain Governor Stevens in his declaration of martial law, and the value of this sort of expression of public opinion. Coupled with the suggestion so widely disseminated, that the pay of the volunteers will depend upon the governor being upheld, it need not be wondered at if, in other parts of the Territory, the Columbia river for instance, where these facts are not understood, a very considerable influence can be brought to bear. For ourselves we will only say that we are not, and have not been, of counsel for any of the accused parties.

We are, sir, your obedient servants,

GEORGE GIBBS.
H. A. GOLDSBOROUGH.

Hon. WILLIAM L. MARCY,
Secretary of State.

A.

GENTLEMEN: The undersigned, citizen volunteers *in the service* of the *United States*, operating in the Territory of Washington for the safety of the heretofore unprotected inhabitants from the merciless outrages of a savage foe, would beg your attention to a few facts connected with the present manner of our commander-in-chief in conducting the movements of troops at his disposal, viz:

1. We deem it our positive duty to obey all orders given by our commander-in-chief not inconsistent with common sense, and which may have as an object the vigorous prosecution of the present Indian war, thereby causing a speedy close to hostilities and a restoration of peace to our homes and firesides.

2. We are confident that we have not obeyed any orders other than those calculated to produce the desired object, notwithstanding we have been advised to the contrary by the supposed legal authorities of the Territory.

3. We know that there was a necessity for the summary steps taken by the executive in ordering in from the outskirts of the settlements certain evil disposed persons living in Pierce county, and knowing

this necessity we *recommended* that such a course be pursued before the executive did so. The following are some of the reasons why we recommended such a course.

1st. We believe that they were the original cause of the war on this side of the mountains, as they were opposed to any treaty being made; and after made, they wilfully misinterpreted the stipulations.

2d. It looked suspicious for them to remain at their homes on the outskirts of the settlements in perfect safety, while all American born citizens were driven to forts and block-houses, or were inhumanely massacred.

3d. It was our opinion they acted as spies for the Indians, and were furnishing them with supplies, from the fact that several of the principal Indian chiefs had been seen to visit their houses, and fresh Indian tracks leading to and from their houses had been seen at various times.

4th. That, previous to the arrest of these persons, it rarely happened that the volunteers could find an encampment of the enemy without previous notice of their coming; but since they have been successful on various occasions, finding also in their encampments subsistence raised on the farms of these persons.

5th. The ordering in of these men to the settlements had a good effect on both hostile and friendly Indians, as by it a considerable source of information and intercourse between each was cut off, and an example shown them [that] we regard all as enemies who did not aid our movements, no matter whether they were white or red. These facts were well known to the civil authorities of Pierce county for more than six months previous, but they took no steps to prevent the continuance, while those who sympathized with the enemy were loud and clamorous in their denunciations of the course pursued by the executive. Witness the editorials of the late "Puget Sound Courier," published in Steilacoom, and the circulation of a set of resolutions purporting to emanate from the citizens of Pierce county.

After the arrest of these persons by the executive, efforts were made by their sympathizers to arrest them from the power of the military and claim their trial before a jury of their own selection. The result would have been to turn them loose again in the community and reopen intercourse with the hostile Indians. To meet this evil the executive determined to proclaim and enforce martial law over the county of Pierce, and afterwards, for the same reasons, over the county of Thurston. Notwithstanding these facts, Chief Justice Lander resolves to hold a term of the district court in Pierce county, (Judge Chenoweth's district) in defiance of the proclamation of martial law; he gave as a reason for his determination, that his oath of office compelled him to hold court in said district at all hazards. We differ with him on this point; and more so when we take into consideration that a large portion of the citizens of said county were at the time actively engaged in the field against the Indians, and it would have been very difficult to procure a proper grand jury, or satisfactory petit jury; besides, many of the volunteers have important cases at issue, and probably would have sustained severe losses by having their causes called, and they not being able to answer,

as they could not leave the field without violating the order, and causing detriment to the service and war. And, further, most of the principal witnesses against these persons that the governor had arrested were among the volunteers, and their evidence would have been lost. If Chief Justice Lander was right, then Judge McFadden, of the southern district, was wrong; for the latter called a term of the district court and then, for the same reason as stated before, adjourned without attempting to do any business. But we are inclined to believe that Judge McFadden was right.

Now, gentlemen, we take this method of expressing our hearty approval of the course pursued by the executive in the prosecution of the Indian war in this Territory, and more especially in his declaring and enforcing martial law over the counties of Pierce and Thurston; knowing as we do that this was the only alternative left to ensure success to the military operations in that section of the country. We do not pretend to discuss the legality of the question; but common sense teaches us that where a necessity exists, a positive course must be taken in order to preserve the lives of our citizens, and we fully endorse the statements made by the executive in his vindication. As to the course pursued by the bar at Steilacoom we have only to say that they have been feed by these persons under arrest, and consequently sympathize with Leschi and his confederates; and, in reply to Judge Chenoweth, we would say that, in our opinion, he could have rendered his country more service by shouldering his rifle and assisting us to repel our common enemy than he did by giving as his opinion that our officers had no right to order us, and we were not bound to obey.

Hon. J. P. ANDERSON, J. LANE, *Delegates, &c.*

SEATTLE, KING COUNTY, W. T., *June* 12, 1856.

I hereby certify that I, W. W. Ward, clerk of the supreme court, am a volunteer in company "A," and that the above is a true copy of the original document sent to said company for their signatures.

W. W. WARD,
Clerk Superior Court.

Chief Justice Lander to Mr. Marcy.

OLYMPIA, *July* 20, 1856.

SIR: In my last communication I forwarded enclosed copies of letters and papers corroborative, as far as possible, of the statements made by me in my first letter to the department.

I also stated that the hearing in the case of Charles Wren et al., Relators *vs.* Isaac I. Stevens, was postponed until the first Monday of July, and that attachments had been ordered for certain persons who had, as appeared by the marshal's return, forcibly resisted the service of an *alias* writ of attachment.

On that day these parties all appeared, in obedience to the writ, and show no disposition whatever to evade the process, or to take advantage of any feeling that might exist in the community in their

favor. On being questioned, under oath, as to their contempt in forcibly resisting process, they severally purged themselves by their answers and were discharged.

Governor Stevens, through his counsel, in the matter of contempt in not making due return to the writ of *habeas corpus*, asked leave to file an affidavit of prejudice, for the purpose, as stated, of moving for a change of venue. Leave not being granted, a joint motion to discharge the rule, to show cause and to quash the writ of attachment, was then made and overruled.

The defendant then answered to the interrogatories filed by the acting United States district attorney, and a copy of the answers and documents annexed thereto is enclosed, among which is the record of the court-martial in the case of the relators.

It will be seen, by these answers, the defendant disclaims all intentional disrespect, and declares his readiness to make immediate return to the writ of *habeas corpus*.

As the process of the court had at length accomplished the end, the defendant was fined fifty dollars, and ordered to make his return to the writ of *habeas corpus*.

A paper purporting to be a respite, signed by Isaac I. Stevens, governor of the Territory, respiting the defendant from execution of the judgment, and all proceedings for the enforcement and a collection of the fine and costs, was then filed, and motion made to suspend further proceedings. This motion was overruled, and the fine being paid, the defendant was discharged from custody under the attachment. The relators then declining further to prosecute their writ of *habeas corpus*, this case was dismissed.

The attention of the court was not called by the acting United States attorney to any contempt of the governor in forcibly resisting two several writs of attachment, but upon an affidavit of the United States marshal after an examination, Governor Stevens was ordered to enter into a recognizance for his appearance at the next term of the United States district court, to answer to a charge of misdemeanor.

With reference to the breaking up of the hearing upon the writ, and the seizure of the judge and clerk by the body of armed men, in obedience to the orders of Governor Stevens, I would call your attention to the language of the section of the act of 1831, which restricts the power of courts to punish for contempts in one class of cases to those persons who commit them in the presence of, or so near thereto as to obstruct the administration of justice.

The officers and men by whom these acts were committed, have been ordered over the mountains some time since, and have marched in pursuance of the order; as they are residents of Oregon it is not probable they will ever be within reach of the process of the court.

Judge Chenoweth, who has been for some time able to attend to his duties, has, I presume, informed the department what course has been taken in Pierce county with reference to the occurrences which have taken place there, detailed by me in my former letters.

Trusting that I shall not again, during my continuance in office,

be compelled to address you under circumstances at all similar to those which I have already reported.

I remain, sir, with respect, your obedient servant,

EDWARD LANDER,
Chief Justice Washington Territory.

Hon. W. L. MARCY,
Secretary of State.

UNITED STATES, *vs.* ISAAC I. STEVENS. } Contempt of court, in failing to make return to writ of *habeas corpus*.

First interrogatory. Why did you not make a return to the writ of *habeas corpus?*

Second interrogatory. Did you, at the time of the service of the writ of *habeas corpus*, at the relation of Henry Smith *et al.*, or at any time during the period intervening between the service of said writ and the time of your having been served with the notice that the judge was at chambers ready to receive your return, seek to obey the mandate of said writ by bringing before this honorable court the persons of those citizens therein mentioned?

If to this interrogatory you answer in the affirmative, state fully and particularly the mode in which you sought so to obey said writ, and all that you did tending to that end.

Third interrogatory. Where were the prisoners, named in that writ, when you were served with the same, and in whose custody?

Fourth interrogatory. To what place were those prisoners then taken, and by whose orders?

Fifth interrogatory. Were the persons, mentioned in said writ of *habeas corpus*, ever brought before a military commission by your orders?

Sixth interrogatory. Do you know what was the decision of the military commission as to the power of that body to try those men on the charge of "aiding and comforting the enemy?"

Seventh interrogatory. Where are those men now, whose names are mentioned in the writ of *habeas corpus* served upon you?

Eighth interrogatory. Are not two of them now in Steilacoom, with orders from you not to leave that place without your permission?

To the *first interrogatory* the defendant responds:

That at and before the issuing and serving upon him the writ of *habeas corpus* in this case, he was, and from that time down to the present has been, and now is, governor of Washington Territory, and commander-in-chief of the volunteer forces of said Territory; that previous to the time of issuing this writ, this Territory was engaged in hostilities with Indian tribes who had invaded her Territory, which state of hostilities still continues, and at the time said writ was issued; and from that time down to the present this defendant, in his capa-

city as aforesaid, was waging war on behalf of the people of the Territory against the hostile Indians within its limits; that the several persons upon whose relation the writ was issued in this case were living on the outskirts of the settlements in a portion of the country where hostilities were raging, and where it was dangerous for others than themselves to reside, and in the locality they inhabited they had peculiar facilities for intercourse with the hostiles; that these persons all had, as defendant believes, Indian women as wives, some, if not all of whom, were related to the hostiles; and there were strong grounds for the belief that they were holding correspondence with the hostile Indians, knowingly relieving them, harboring and protecting them; that this belief was general, not only among the citizens and volunteers in the field, but also among the friendly Indians upon the reserves, and was producing great excitement in this and the adjoining county of Pierce; that those persons had been ordered out of the hostile country by this defendant, and upon their not complying with the order, this defendant, in his capacity as aforesaid, caused the order to be issued to Mr. J. W. Smith, a copy of which, marked "A," is herewith submitted; that in pursuance of said order, said persons did come in without the necessity of a forcible removal; but afterwards, about the 30th and 31st days of March last, a scouting party, consisting of volunteers under the command of Major H. J. G. Maxon, finding said persons on their claims in said hostile country, arrested them, brought them to Olympia, and by the orders of this defendant they were sent to Steilacoom, where they were, as this defendant believes, kept in close confinement in the guard-house at the military s ation; that on or about the 6th day of April, this defendant caused all of said persons, excepting Wren, to be brought to Olympia; that Wren, being sick, was allowed to remain with his family at Steilacoom, and the others were allowed to remain at large in said town of Olympia, with permission, upon application, to go back and forward to Steilacoom and Nesqually by the usually-travelled route, but prohibited from approaching the war grounds, and particularly prohibited from returning to their claims; that this was the only restraint to which said persons or any of them were subject at the time said writ was served upon this defendant; that at this time there was also very great excitement, and this defendant entertained serious apprehension that, were the prisoners taken from the control of the military authorities, it would endanger their lives—would, at a critical period of the war, disorganize the volunteer forces, and probably occasion an outbreak among the Indians then continuing friendly upon the reserves. To prevent these great calamities, as the executive of the Territory and commander-in-chief of the volunteers, he considered it his imperious duty to proclaim martial law, and upon the 13th day of May last, accordingly did proclaim martial law over the county of Thurston; and in consequence thereof, after the proclamation of martial law, he caused Lyon A. Smith, Charles Wren, and John McLeod to be arrested and sent out of the county to be tried by a military commission; that in consequence of the condition of the Territory, of the state of public feeling, the condition of the friendly Indians, and the proclamation of martial law as is above stated, this defendant con-

scientiously believed that it was his duty to refuse to return said writ of *habeas corpus*, or produce the bodies of said persons in said writ mentioned; that this refusal to return said writ was not intended to cast any disrespect upon the court or upon its process, but was occasioned solely by a conscientious desire faithfully to discharge his own official duties as such governor and commander-in-chief as aforesaid; that ever since the abrogation of martial law, and the condition of the country has justified him in so doing, he has been and now is willing to make his return to said writ and submit his action in the premises to the judgment of the court, and in his answers to these interrogatories to make full and complete return, that the court may be in possession of all the facts in the case. The defendant also asks to submit, in illustration of his answer, the accompanying map of the hostile country, showing the residence of the relators and the field of military operations.

This defendant further says, that the proclamation of martial law was written and signed by him about sundown on the evening of the 13th day of May last, printed the same evening, and posted up in the public streets about seven o'clock on the morning of the 14th; that said McLeod and Wren were arrested about noon on Wednesday, the 14th day of May, by the volunteer forces, under the order marked "B," a copy of which is hereto attached; that L. A. Smith was also arrested under his orders about the 20th day of May last, at the county of Pierce.

A.

OFFICE ADJUTANT GENERAL,
Olympia, Washington Territory, March 8, 1856.

SIR: You are hereby directed to employ twenty men, consisting of the party which left here under command of Mr. J. T. Roberts, together with such of the Rangers as may not be otherwise employed, together with any other good men you may be able to raise en route.

Proceed to the Yelm, and, departing thence, after arranging your plan with Captain Ford, march to the settlement occupied by the French and other foreign-born settlers, and remove them to Fort Nesqually.

Exhaust all persuasive means before resorting to force in their removal; but, if needful, exert force in effecting the object of the expedition.

By order of the governor and commander-in-chief.

JAMES TILTON,
Adjutant General, W. T. Volunteers.

Mr. J. W. SMITH.

OFFICE ADJUTANT GENERAL W. T., VOLUNTEERS,
Olympia, W. T., July 7, 1856.

I hereby certify the foregoing to be a true copy of the original on file in my office.

JAMES TILTON,
Adjutant General W. T. Volunteer Forces.

B.

EXECUTIVE OFFICE, TERRITORY OF WASHINGTON,
Olympia, May 14, 1856.

SIR: You will arrest John McLeod and Charles Wren, and send them to Fort Montgomery, there to await their trial on the 20th instant, &c.

Yours, respectfully,

ISAAC I. STEVENS,
Governor and Commander-in-chief.

Captain B. MILLER,
Company I, 2d Regiment W. T. Volunteers.

To the *second interrogatory*, the defendant responds: That, for the reasons given in his answer to the first interrogatory, he did not seek to obey the mandate of the writ referred to in said interrogatory, after the proclamation and during the continuance of martial law.

To the *third interrogatory*, the defendant responds: That all the persons named in the writ were on their parole at Olympia, Steilacoom, or Nesqually, and not in actual restraint by any person other than is stated in the answer to the first interrogatory.

In answer to the *fourth interrogatory*, the defendant responds: That by his orders L. A. Smith, McLeod, and Wren were taken into custody on the 14th of May, after the proclamation of martial law, and taken to Camp Montgomery.

In answer to the *fifth interrogatory*, the defendant responds: That Smith, McLeod, and Wren were, by his orders, brought before a military commission at Camp Montgomery.

To the *sixth interrogatory*, the defendant responds: That he has no knowledge of the decision of the military commission as to the power of that body to try those men, except as is derived from the official record of its proceedings, a certified copy of which is herewith annexed.

To the *seventh interrogatory*, the defendant responds: That he has no knowledge where the men are whose names are mentioned in the writ.

To the *eighth interrogatory*, the defendant responds: That he has no knowledge whether one or more of the men mentioned in the writ are in Steilacoom or not.

In answer to both the seventh and eighth interrogatories, the defendant will state, that none of the men mentioned in the writ are in any restraint by him, or by any person acting under his orders, except that the order prohibiting the men from returning to their claims has not been revoked.

ISAAC I. STEVENS.

Sworn to in court, and subscribed the 9th day of July, 1856.

ELWOOD EVANS,
Acting Clerk U. S. District Court, 2d Jud. Dist. W. T.

Mr. Marcy to Governor Stevens.

DEPARTMENT OF STATE,
Washington, September 12, 1856.

SIR: I have laid before the President all the documents and papers which you have transmitted to this department in explanation of your course in declaring martial law in some parts of the Territory of Washington. After a full consideration of them, he has not been able to find, in the case you have presented, a justification for that extreme measure. Whether, in any circumstances whatever, the governor of a Territory can resort to such a measure, unless under express authority given by legislation, is a question which it is not proposed now to discuss or decide. It is quite certain that nothing but direful necessity, involving the probable overthrow of the civil government, could be alleged as any sort of excuse for superseding that government temporarily and substituting in its place an arbitrary military rule. The recognition of such an inherent power in any functionary, whatever be his grade or position, would be extremely dangerous to civil and political liberty.

While the President does not bring into question the motives by which you were actuated, he is induced, by an imperative sense of duty, to express his distinct disapproval of your conduct, so far as respects the proclamation of martial law.

Were the President able to adopt the conclusion that martial law could, in any case, be established without express legislative authority, he could not find such a case in the state of things in Washington Territory as you have presented them. Where rebellion, or a formidable insurrection, had in effect overthrown the civil government, martial law has been occasionally resorted to as the only means left for its re-establishment. Martial law has, also, been resorted to in aid of the government when in imminent danger of being overpowered by internal or external foes. In such cases, the measure has been regarded as excusable; but it never can be excusable where the object of resorting to martial law was to act against the existing government of the country, or to supersede its functionaries in the discharge of their proper duties. The latter seems to have been the principal ground you had for proclaiming martial law. Your conduct in that respect does not, therefore, meet with the favorable regard of the President.

I am, sir, your obedient servant,

W. L. MARCY.

His Excellency ISAAC I. STEVENS,
Governor of the Territory of Washington.