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Message of the President of the United States, communicating, in compliance with a resolution of the Senate of the 1st ultimo, copies of the papers relating to the proclamation of martial law in Washington Territory.

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MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of the 1st ultimo, copies of the papers relating to the proclamation of martial law in Washington Territory.

AUGUST 5, 1856.—Read, referred to the Committee on Territories, and ordered to be printed.

To the Senate of the United States:

In answer to the resolution of the Senate of the 1st instant, requesting a copy of papers touching recent events in the Territory of Washington, I transmit a report from the Secretary of State and the documents by which it was accompanied.

FRANKLIN PIERCE.

WASHINGTON, August 4, 1856.

DEPARTMENT OF STATE,
Washington, July 9, 1856.

The Secretary of State, to whom was referred the resolution of the Senate of the first instant, requesting the President to transmit to the Senate "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," has the honor to lay before the President the documents mentioned in the subjoined list, which are all in this department called for by the resolution.

Respectfully submitted,

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

List of papers accompanying the report of the Secretary of State to the President, of July 9, 1856.

Mr. Gibbs to the President, May 6, 1856, with an accompaniment.
Governor Stevens to the President, May 11, 1856, with an accompaniment.

Messrs. Gibbs and Goldsborough to Mr. Marcy, May 11, 1856, with an accompaniment.

The same to the same, May 19, 1856, with an accompaniment.

Judge Lander to Mr. Marcy, May 22, 1856, with accompaniments.

Mr. Evans to Mr. Marcy, May, 25, 1856.

Mr. Gibbs to the President.

STELLACOOM, WASHINGTON TERRITORY, May 6, 1856.

SIR: Pursuant to the concluding resolution of those enclosed, I have the honor herewith to forward a copy of the proceedings of the bar of the Territory, upon the occasion of the proclamation of martial law and subsequent arrest of the chief justice while holding court at this place, and to solicit most urgently your attention to this flagrant usurpation of power by Governor Stevens.

I have the honor to be, sir, your obedient servant,

GEORGE GIBBS,

Secretary of the Territory.

To the PRESIDENT OF THE UNITED STATES.

Proceedings of a meeting of the bar, third judicial district, Washington Territory, on the arrest of the Hon. Edward Lander, Chief Justice of said Territory, and John M. Chapman, clerk of the district court, by an armed force under orders of Governor Isaac I. Stevens. Together with the proceedings of a mass meeting of citizens of Pierce county, W. T.

NOTE.—On the 7th day of May, 1856, the Hon. Edward Lander, chief justice of Washington Territory, and John M. Chapman, esq., the clerk of the district court of the United States of the third judicial district, were forcibly arrested in the court house at Steilacoom, W. T., while engaged in holding a United States district court for the county of Pierce, by a volunteer force, acting under instructions from Governor I. I. Stevens, and carried under guard to Olympia, the seat of the territorial government.

Immediately upon the removal of Hon. Edward Lander and J. M. Chapman, esq., from the district court room, Col. Wm. H. Wallace requested the members of the bar to remain. Those in attendance,

consisting of Messrs. Wallace, Gibbs, Clark, Pease, Hewitt, Murden, Kendall, and Evans, on motion organized by the appointment of William H. Wallace, esq., chairman, and Geo. Gibbs, secretary.

B. F. Kendall, esq., being called upon, stated the objects of the meeting to be a consideration of the extraordinary proceedings of the arrest of the judge and clerk by an armed force, acting under instructions of Gov. Isaac I. Stevens, and under pretext of a proclamation of martial law over the county of Pierce. Mr. Kendall, on the conclusion of his remarks, moved the appointment of a committee of three to draft resolutions expressive of the sense of the bar at this outrage against law and judicial authority. The motion was adopted, and Messrs. Gibbs, Evans and Pease, were placed upon said committee.

On motion, the chairman of the meeting was added to the committee, and the meeting then adjourned until 2, p. m., of the same day.

ADJOURNED MEETING.—Accordingly, at 2, p. m., the members of the bar again met, when the chairman of the committee on resolutions made the following report:

A meeting of the bar has devolved upon this committee the task of giving expression to the sentiments entertained by that body of the gross outrage this day inflicted upon the court and bar of this district, by the exercise of military power over civil authority.

This day marks an era in the territorial history. For the first time in the annals of our country does the exhibition present itself of an armed force marching into a court of justice, and while the presiding judge thereof is in the exercise of judicial authority, the court is overawed, its judge taken from the bench, its clerk arrested, the records seized, and they removed by an armed force out of the county in which, by law, the court was to be held. In view of these circumstances, we deem it our solemn duty to make a statement of the facts, submitting it with confidence to the judgment of the world.

A war existing against Indian murderers and marauders in this territory, it would have been a subject of gratulation if the gallant volunteers in its service had been employed in punishing those Indians, rather than in sustaining lawless violence, and in the infliction of outrages upon our courts and people. For so violent an assumption of power, we conceive that some little basis of reason should be found to justify it. But it becomes our duty to assert that no such reason exists, and that the proclamation of martial law is unnecessary, inexpedient, illegal, and void; to sustain which declaration the following statement of facts is confidently relied upon. It is our wish to treat this subject not in a spirit of excitement, although that would be fully justified by the circumstances, but with coolness and moderation. Satisfied as we are that the bare statement of the facts is sufficient, we need no appeal to passion or prejudice.

Several citizens of Pierce county, one of the most populous in the Territory, who had been ordered in from their claims to the town of Steilacoom, on suspicion of intercourse with the hostile Indians, and had subsequently returned to their homes, were arrested without process of law, in the latter part of March, by a force of volunteers acting under direction of Gov. Stevens, and having been first carried to Olympia, in the county of Thurston, were by the governor remitted to the military

post of Fort Steilacoom, with request to the commanding officer to detain them on a charge of *treason*. Col. Casey having replied that he could not hold them in defiance of civil authority, and the persons arrested having sent to the nearest judge, who resided in Island county, a distance of about a hundred miles, for a writ of *habeas corpus*, Gov. Stevens, on the 3d of April, issued a proclamation in the following words:

“Whereas, in the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion, such 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 the said county, and great injury to the public, and the plans of the campaign be frustrated, if the alleged designs of these persons be not arrested, I, Isaac I. Stevens, governor of the Territory of Washington, do hereby proclaim martial law over the said county of Pierce, and do by these presents suspend for the time being, and till further notice, the functions of all civil officers in said county.

Given under my hand at Olympia, this third day of April, eighteen hundred and fifty-six, and the year of independence of the United States the eightieth.

ISAAC I. STEVENS.”

This document, it will be observed, alleges no other motive than that the persons so arrested, without warrant, and by the sole authority of military force, were about to sue out the great *writ of right* to relieve themselves from illegal confinement.

It is to be observed, that there was at this time in the county of Pierce three companies of United States troops, under command of a veteran and energetic officer. There were also one or more volunteer companies, engaged in scouting; the Indians had been driven from the settlements to take refuge in the woods, and if any danger had ever existed of communication between these persons and the enemy it had ceased.

Following upon the heels of this extraordinary document, which was *without seal* and *without attestation*, which found no other publication than the transmission of written copies to a few military officers, the persons so charged were taken once more from the county of Pierce, and removed by a military guard to Olympia, out of the district where martial law had been proclaimed. Yet, notwithstanding this removal of the suspected parties, the proclamation was continued in existence, and the volunteer officers directed to enforce it.

After a few days some of the persons so arrested were permitted to return on their parol to Steilacoom, while the others were, and are still, in custody at the seat of government, and, as is reported and believed, are to be tried by a military commission of volunteer officers, to be held in Pierce county, on a charge of treason against the United States.

The United States judge assigned to this judicial district, being

detained at home by severe illness at the time when by law the term of the district court was to be held, the Hon. Edward Lander, chief justice of this territory, who resides in the adjoining district, at the special written request of Hon. Judge Chenowith, undertook to hold said court, and on Monday the 5th May instant arrived at Steilacoom and opened the court in due form. Having been informed, however, on his way to the court, by Lieut. Col. B. F. Shaw, commanding a volunteer force under authority of the governor of this Territory, that if he attempted to hold said court, he would be forcibly prevented, Judge Lander, in order to prevent a collision between the executive and judicial authority, suggested that he would simply open and adjourn the court until Wednesday, that the governor might be advised to withdraw his proclamation.

About three days previous to opening court, Col. 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 was 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 was to be transacted before the court, and recommended that, in consequence, the proclamation be abrogated. Judge Lander now himself wrote to Governor Stevens, informing him of the course he had taken; that there were important causes to be tried before the court, one of which, the suit of the United States *vs.* the former collector of Puget Sound, ought to be tried; that there was imminent danger of a collision between the civil authorities and the military, and recommending that martial law be at once abrogated, especially as the present condition of the county seemed not to require it.

In reply, Governor Stevens, on the 6th instant, while declining to withdraw his proclamation, suggested that Judge Lander adjourn his court to the first Monday in June, and informed him that he had examined the law, and found no difficulty in his adjourning from any time to the next term of court.

Upon the receipt of this information, Judge Lander, having done his duty as a citizen in endeavoring to prevent the expected collision, proceeded to fulfil those of his judicial office by opening court at the appointed time; accompanied by the clerk, United States deputy marshal and sheriff, he went to the court house, opened the court by proclamation in usual form, and caused the grand jury to be empanelled and sworn. During this time, a company of volunteers, (many of them citizens of Oregon, although enrolled in this Territory,) drawn from Clark county on the Columbia river, entered the court room with loaded rifles and drew up without the bar; another company was kept in reserve without, to assist them if necessary. Judge Lander then directed the deputy marshal to prevent the entry of any armed men within the bar, but the commanding officer having announced that he acted under orders from Governor Stevens, directed his men to arrest the judge and clerk. In obedience to that order they entered the bar, the deputy marshal being unable to prevent it, and arrested the judge in his seat; the judge stating that he only suc-

cumbed to force, and declined calling upon the *posse comitatus*, because he wished to avoid bloodshed. Judge Lander and the clerk, J. M. Chapman were then removed by the military from the court house, and on the same day taken out of the county and carried to Olympia. The records of the court, which were at first seized, were subsequently returned to the deputy clerk.

During this time the citizens present, though manifesting a deep feeling of indignation at the transaction, refrained from any disorderly or violent acts. The conduct of Judge Lander was throughout dignified, firm, and worthy of his high position, and was, we are satisfied, dictated only by a strict sense of duty.

Upon these facts the committee report the following resolutions:

Resolved, That we look upon the act this day perpetrated by an armed force under the authority of Governor I. I. Stevens, in arresting the judge and clerk of this judicial district, as an outrage which if tamely submitted to would be entirely subversive of our liberties.

Resolved, That, as members of the bar, we solemnly protest against this assumption of power by the executive—that the doctrines of our profession teach us that there is no warrant for such a procedure—that the course of the executive is without a precedent in law or justice, and that it is a violation of every principle of constitutional privilege and liberty.

Resolved, That the proclamation of Gov. Stevens, suspending the writ of *habeas corpus* was an improper exercise of authority, and a usurpation unheard of in the history of our country; that the right of *habeas corpus* is one of those dearest to our people, the right more powerfully protected by the national Constitution than any other, its suspension being an exercise of authority only conferred upon Congress with extreme restriction, and not inherent in any *officer* in our national confederacy.

Resolved, That the governor's proclamation in showing that certain parties were arrested on a charge of *treason*, in itself shows the necessity of a court of law for the trial of such prisoners—a military commission or court martial being incompetent to try men charged with such offences.

Resolved, That the peaceful manner of the citizens of Pierce county, in submitting quietly and without resistance to the outrages this day inflicted upon them, shows conclusively that no necessity exists for martial law, no exigency requires it, no public necessity invokes its aid.

Resolved, That the judiciary of our country is the palladium of our best rights, that its protection from outrage is one of the first duties of a public officer, its subversion a most despotic assumption of authority; that it is a separate branch of our institutions, independent of and not subservient to the *executive*, and that the act of Governor Stevens this day consummated is a violent outrage upon law and upon the rights of this people.

Resolved, That we unanimously tender to Chief Justice Lander our sympathies on this trying occasion; that his manly course in holding the court until surrounded by an armed *posse*, and forcibly removed from the bench, merits our thanks; to him, to the deputy United

States marshal, and to the clerk, we tender our thanks for their zealous effort to protect the court house from invasion, and to maintain the dignity of the bench.

The report and resolutions were unanimously adopted, and on motion, the secretary of the meeting was instructed to forward a copy of the same to the President of the United States, our delegate in Congress, the members of the Committees on *Judiciary* and *Territories* of both Houses of Congress.

On motion it was resolved, that the members of the bar, participating in this meeting, express their concurrence by appending their signatures to these proceedings.

W. H. WALLACE, *Chairman*.
 ELWOOD EVANS,
 C. C. HEWITT,
 FRANK CLARK,
 B. F. KENDALL,
 WILLIAM C. PEASE,
 E. O. MURDEN,
 H. A. GOLDSBOROUGH,
 GEORGE GIBBS, *Secretary*.

MASS MEETING.

A meeting of the citizens of Pierce county, Washington Territory, was held at the court house in Steilacoom, on the seventh of May, 1856, to take into consideration the outrage committed by the executive of this Territory upon the civil rights of its citizens. Thomas M. Chambers, esq., was called to the chair. E. Schroter was chosen secretary, and E. M. Meeker assistant secretary.

On motion, W. H. Wallace spoke at some length, stating the object of the meeting to be the consideration of the outrage committed upon the civil rights of the people of this Territory, by the violent and illegal seizure of the chief justice and the clerk of the court of this Territory, by the orders of the executive.

On motion of J. M. Bachelder, George Gibbs, esq., also stated, in a brief and forcible manner, his views on the same subject.

On motion, the chair appointed Messrs. Samuel McCaw, R. S. Moore, Hugh Patterson, W. R. Downey, and W. M. Kincaid, as a committee to draft resolutions expressive of the sense of the meeting on the occasion. The committee reported the following resolutions:

Whereas, Isaac I Stevens, governor of Washington Territory, has proclaimed martial law over the county of Pierce, in said Territory, and has this day, by an armed force, interrupted the proceedings of the United States district court by arresting the judge and clerk thereof, while in the legal discharge of the duties imposed upon them by their respective appointments, therefore,

Be it resolved, by the citizens of Pierce county assembled, that in declaring martial law over this county, in order to suspend the writ of

habeas corpus, the governor has violated the civil rights of the citizens, and trampled their dearest privileges under foot. That while nearly all the citizens of this county have volunteered and served faithfully in this war now being carried on against the Indians, we have seen no feeling manifested that justified the assumption by the executive of all civil law, and the suspension of all legal protection.

Resolved, That Chief Justice Lander, in the discharge of his official duties, has exhibited every disposition to avoid any collision between the executive and judicial authorities, consistent with the position in which he was placed by the executive of the United States, and his manly course has won our sympathy and regard.

Resolved, That in the seizure of the chief justice of this Territory, while on the bench in the quiet discharge of his duties, we recognize a usurpation of authority, unheard of in the annals of our free republic, an indignity cast upon our courts of law, and upon a free people, ever holding themselves amenable to the civil authorities.

Resolved, That the tyrannical and despotic acts of the executive of this Territory are such usurpation of law and authority as requires the interposition of the supreme authority of the United States; and that the secretary of this meeting be directed to transmit copies of these resolutions to the President of the United States, to our delegate in Congress, to the Committees on the Judiciary and on Territories in each House of Congress, with a request that they will take such action thereon as may protect the people of this Territory from future usurpation, and in the exercise of their civil rights and personal liberties.

S. McCRAW, *Chairman*.

R. S. MORE,

HUGH PATTERSON,

WILLIAM M. KINCAID.

WILLIAM R. DOWNEY.

The resolutions were unanimously adopted and the meeting adjourned without day.

THOMAS M. CHAMBERS, *Chairman*.

E. SCHROTER, }
E. M. MEEKER, } *Secretaries*.

Governor Stevens to the President.

EXECUTIVE OFFICE, WASHINGTON TERRITORY,
Olympia, May 11, 1856.

SIR: Having, in the prosecution of the Indian war, proclaimed martial law in the county of Pierce, and enforced it by the arrest of the judge and clerk, the bar of that county and a portion of the citizens have felt it to be their duty to protest against it, and have issued a circular embodying their views and giving a statement of facts, which they propose to send you.

I have caused to be published a vindication of my course, which herewith enclose.

I have acted from a solemn sense of duty ; whatever be the consequences personal to myself is a secondary matter, provided only that this disastrous war be ended.

I am, sir, very respectfully, your most obedient servant,
ISAAC I. STEVENS,
Governor Washington Territory.

To the PRESIDENT OF THE UNITED STATES.

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 resent 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 and action 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 over-ruling 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 condition 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 positions 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 fraternised 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 Nisqually 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 Nisqually, 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

Indians 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 Lieutenant 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 sympathise 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 Lieutenant Colonel Casey refused to receive the prisoners. He did receive them, but when the writ of *habeus 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 Nisqually, 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 Nisqually 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 *habeus corpus* was about to issue to free these "evil disposed persons" from the power of the military, he determined to meet it by the proclamation of martial law.

The writ of *habeus 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 Nisqually, Steilacoom, and Olympia. The result would have been to paralyse 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 sympathisers.

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 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 country for its continuance—informing him that important business would be before the court, and recommended 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 enquiry, 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, who 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 obedient servant,

B. F. SHAW,

Lieut. Col. Comm. Right Wing W. T. Vol.

Gov. I. I. STEVENS,

Commander-in-Chief Volunteer Forces.

Messrs. Gibbs and Goldsborough to Mr. Marcy.

STELLACOOM, WASHINGTON TERRITORY, *May 11, 1856.*

SIR: As citizens of this Territory, interested in its good government and well acquainted with the facts herein stated, we take the liberty of addressing you relative to the official conduct of Governor I. I. Stevens; more particularly as regards his proclamation of martial law in Pierce county, and the other events growing out of it. We enclose two documents, the one being the proceedings of the bar and of a meeting of citizens, and the other Governor Stevens' vindictory reply to the same, which we submit to your consideration. We are especially induced to address you at length, as we understand that Chief Justice Lander, after having been conveyed to Olympia under guard, is holding his court there, and does not intend to report this matter to you.

The leading facts which resulted in the arrest of the chief justice and clerk are detailed in the report of the committee of the bar, and need not be here repeated. Governor Stevens' reply admits the proclamation of martial law, the arrest and breaking up of the courts, and the proposed trial by a military commission, consisting of volunteer officers holding under his appointment and subject to his will, of citizens accused of the crime of *treason*—a crime which it is hardly necessary to say can, by the Constitution, be judged of by no such tribunal.

It is, therefore, only needful for us to review the circumstances, amounting, in his opinion, to a justification, which he has assigned for so dangerous and unheard of an usurpation of power. Even this may be deemed unnecessary, for we do not believe that the Executive can look upon measures of such dangerous precedent, infractions of constitutional right so open and apparent, as within the discretion of any one, under any state of things. But, that Governor Stevens' conduct may appear in its true light, we propose to show that no facts even excusing his conduct existed; that he has been actuated by an arrogant and unbridled love of power that unfits him for any trust in which life or liberty is concerned. In speaking thus, or attributing to him the motives which, in our opinion, have governed him, we do so advisedly, upon an intimate knowledge of the man since his first arrival in the Territory.

Governor Stevens, in his "vindication," dwells upon "the condition of the Territory and of Pierce county, at the time of issuing his proclamation." and "its condition for months previously." As regards the state of the Territory during the winter, and until the arrival of new troops enabled Colonel Casey to extend his lines and to act offensively against the Indians, he has not said too much, nor can too deplorable a picture be well drawn of it, but we entirely deny, that at the time of issuing his proclamation, the 3d of April, or for some time previous, such was the condition of things here. The farmers generally were returning to their claims to save what of their property they could, and to put in spring crops, and in doing so they were encouraged by Colonel Casey, the commanding officer of this district. Among others, the parties accused of treason, who were then living in the town of Steilacoom, by the governor's order went out to attend to theirs. And now, a few words as to these men. They were seven in number, L. H. Smith, Henry Murray, Charles Wren, Peter Wilson, John McLeod, Henry Smith, and — McPhail. Of these, only Wren, McLeod, and McPhail ever were servants of the Hudson's Bay or Puget's Sound Companies. In fact, nearly all were on terms of hostility with those companies, having squatted on their lands. McLeod and Henry Smith have no wives or families. The wives of Murray and Wren are half-breeds from the Red river country, and have no connexion with the Indians of this country. That any of them had ever had voluntary intercourse with the hostile party, or had furnished them with supplies in any form, rests on mere suspicion, except as to the fact that on Christmas a party of Indians visited the house of McLeod and compelled him, as he states, to give them food. It is this circumstance out of which Governor Stevens, it is presumed, has manufactured his treasonable meeting.

That these men were the main original cause of the war, or a cause in any shape, is a fiction that has found birth in Governor Stevens' own brain, and never, to our knowledge, was dreamed of by any one else. These causes it is not now necessary to discuss; there are many who attribute them chiefly to Governor Stevens himself. But if there has been grave cause for belief that those men have been thus guilty, or that they held a meeting on Christmas, or at any time, at which they determined to keep up the war, confident that they would be gainers by it; if these things had been matters of public notoriety for months, as Governor Stevens alleges, how happens it that they never were arrested, or even ordered in to the towns, until after the murders of White and Northcraft, in the beginning of March; and that even then, he was "unwilling to resort to harsh measures" against them.

The facts respecting these men, as far as known, are simply these: They were most of them old settlers, some of them old servants of the company, and married to Indian women; they had lived peaceably among the Indians when there were but few other whites in the country; they formed a small settlement by themselves in a somewhat remote corner of the county; several of them, L. A. Smith, Murray, and Wren, were well off, in fact, among the richest farmers here, and they undoubtedly hoped to escape with their lives, and be able to protect their property if they remained at home, trusting more than as

good or as prudent citizens they should have done, to their former relations with the Indians for security, and wishing to remain, as it were, neutral, while the fight went on around them. In doing so, they exposed themselves to have contributions levied upon them by the enemy, but, it may be remarked, that had they fled at the outset, the Indians would have possessed themselves of the same, and even more, supplies, besides destroying their farms completely. As it is, they were pillaged of cattle and horses, even before they were ordered in. Such is the amount of guilt, so far, at least, as there is any proof, and, as we believe, so far as most of them were guilty at all. That they have supplied arms or ammunition we do not believe. Governor Stevens has simply assumed their guilt and proceeded to judge them accordingly. Had Acting Governor Mason or Governor Stevens compelled these persons, with all others similarly situated, to leave their claims early in the winter, when their presence there actually was dangerous, whatever might have been their disposition, no one could have blamed him. Such an order could have been enforced, it is presumed, by legal means, and as a measure of general policy, if not of necessity.

Colonel Casey has been cited as having called the attention of the governor to these men, and as stating that an Indian prisoner had informed him that the movements of the troops had been communicated to Leschi, (an Indian chief,) by one of these persons. We have made inquiry of Colonel Casey respecting this assertion, and find the truth to be, that Doctor Suckley informed him that Yellowt, an Indian in government employ, said, that one of Leschi's men had stated that Leschi told him that he had the information from another Indian who had formerly lived with one Edwards, not one of the persons arrested, nor even a citizen of Pierce county, but of Thurston county, in which the governor, himself, resides.

The murders of White and Northcraft, it appears, first taught the governor his duty in the premises. More men were barbarously murdered, it is true, but the murders were committed in Thurston county, by a party of Indians who had harbored there, and not in Pierce county. This party, in leaving the neighborhood, however, came into Pierce county, and passed by the houses of some of the suspected persons, stopped and addressed them, informing them what they had done. They were not greeted in friendship, but received with fear; and one of the worst suspected, L. A. Smith, the next day came into Steilacoom, reporting the facts along the road and at the town.

The measure of ordering the whole from their claims was now tardily executed. How dangerous these men were considered, and how much proof existed against them, may be imagined from the treatment which, by the governor's own account, they received. They were offered their choice of residence, were not confined, guarded, nor even disarmed. Yet Governor Stevens states, that such was the public indignation against them that it was an indispensable measure of precaution, in order to protect the lives of these persons from the justice of an outraged community.

A short time after, desirous of looking after their claims and property, and supposing the affair blown over, they went home again;

some of them, at least, having taken the precaution to obtain a permit from Governor Stevens' local Indian agent; and they were there seized by a volunteer force, who, it is understood, had orders to take them, alive or dead; and having been first carried before Governor Stevens, at Olympia, five of them were sent to Colonel Casey, at Fort Steilacoom, with a request that he would confine them. It was not intended by the committee of the bar to assert that Colonel Casey refused to receive them, but simply that he would not *hold* them, in defiance of civil authority. The correspondence between him and the governor on this subject will be found in the War Department, Colonel Casey having transmitted copies. That officer has since stated his opinion openly, that even had the proclamation been legal, there has been no time since the first of March when it was necessary. During the interview between the governor and his prisoners, as they state, and we believe truly, he treated them with the greatest insolence, cursing and abusing them.

There are various misstatements of the committee's report as cited by Governor Stevens, which it is hardly worth while to follow. The main facts are not even controverted.

The proclamation of martial law was made and perhaps a written copy was posted in Steilacoom. It was made, not on pretence of desperate peril to the Territory from these six or seven men, but to prevent their obtaining a right which the Constitution of their country had secured to them, against precisely such cases. It was without law, precedent, or palliation, and intended to subject them to the despotic will and pleasure of an officer whose rage was excited, not by their crimes, but by their disobedience to his orders. Its effects were not confined to them. It was left in force through the county, when those persons were carried to Olympia, out of the judicial district. It has since hung over it, paralyzing all civil authority, all customary judicial business, and was finally exerted in the most flagrant act of executive outrage known in the records of the United States.

That the utter falsehood of the prettexts set up by Governor Stevens for his conduct may be understood, it is only necessary to state that these same persons, although awaiting their trials by a military commission on a charge of *treason*, are at this moment on parole, and quietly walking about the towns without guard, with their usual arms, or passing at large between Steilacoom and the volunteer block-house.

That extraordinary court, as is publicly stated, is to consist of three volunteer officers, appointed by Governor Stevens and holding their commissions at his will, and is to sit at a block-house some twelve miles from the town of Steilacoom, on the military road to Walla Walla, and at some distance from any inhabitants. Six weeks have thus elapsed since the first arrest of these men for imputed crimes of enormous magnitude, and they have not yet been arraigned even, before such a court as this. We avow it without qualification, that Governor Stevens has been afraid to bring them to trial, because he had no proofs against them. The other matters in the vindication may be passed over with but brief notice. The assertion that since the declaration of martial law a great change for the better has taken place is true; but the operations of the troops, not the proclamation

or its consequences, have effected this. The change was visible before even the arrest of Smith and the others. It followed from the fight of March 1st, on White river, from the subsequent repulse of the Indians by the volunteers at Fort Hayes, and the various scouts that have been made.

The position in which the war stands at this time, and stood at the time of the governor's proclamation, in the view of the commanding officer of this district, may be seen from the accompanying extract of a letter from Colonel Casey to General Wool. The governor states, indeed, that within the last fortnight, houses and barns have been burned in the county of Thurston. We have heard of only one barn being burnt; but granting that many had been, we see no reason in this for keeping Pierce county under martial law. He says, as if it were a new and astonishing thing just come to his knowledge, that "the Indians have announced their determination to lay waste the settlements." How this announcement was made, and its date, does not appear; possibly it was published after the manner of his proclamation. Is such gasconade, on the part of Indians or superintendents of Indian affairs, to justify steps like the assumption of absolute power?

We deny absolutely that any crisis existed then, or has since, in the affairs of the Territory. What may happen hereafter will, in a great measure, depend upon the movements of the troops on the line of the Columbia river, but cannot, in any way, affect the past. The sole object of the proclamation was to get half a dozen obscure individuals into his absolute control, and to demonstrate that he, Isaac I. Stevens, could, on the field offered by a small Territory, enact, at second hand, the part of Napoleon.

The arrest of Chief Justice Lander, and the breaking up of his court, was but a necessary sequence to the proclamation of martial law. Governor Stevens has brought forward the testimony of Lieutenant Colonel Shaw as to the necessity of enforcing the proclamation at that time. Colonel Shaw expressed to Mr. Gibbs, and it is believed to others, very different views on the day of the occurrence. But, setting this aside, the opinion of an officer of Governor Stevens' own creation can hardly be taken as a justification for his assuming so tremendous a responsibility.

With regard to the propriety of Judge Lander's trying the cases referred to, we say nothing. The only information we have on the subject is derived from the governor's statements. Admitting them, they concern merely his fitness as a judge, and not Governor Stevens' right to take him from the bench.

Governor Stevens concludes his vindication by saying, "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."

We apprehend that the governor has misunderstood the question. It is simply whether a public servant shall be allowed to over-ride all

law, even the highest; to usurp, at his sole and egotistical discretion, absolute power over life and liberty, or whether the LAW OF THE LAND is to control him.

Governor Stevens states that the event showed that there was no danger of a collision between his volunteer force and the people of this county. That event simply showed that, in accordance with the wish of the courts, placing full confidence in the general government, and in full expectation of redress, the people submitted for the time. We can assure you, sir, however, that a single word from the chief justice would have led to resistance, and that we have no thought of permitting a repetition of the outrage.

The majority of the people of the county, of all parties and modes of political opinion, were present then and at the subsequent meeting. There was not a single dissentient voice raised upon the resolutions condemning the governor, nor among the volunteers belonging to the county, then in the field; nor do we believe he finds a single defender. The force brought into court was from a distant portion of the Territory, and many of its members were citizens of Oregon. Even among them, many openly expressed their disgust at the service. The critical condition of the Indian war at this time may be judged from the fact that two whole companies of volunteers, under command of a lieutenant colonel, have been kept for a fortnight laying in wait, not for enemies, but for courts of justice, for as we just now learn the same performance is enacting in Olympia.

In conclusion, we must declare our honest belief, as citizens of Washington Territory, that the immediate removal of Governor Stevens from office is absolutely requisite for the peace and safety of this community. Of a naturally arrogant and domineering character, of overweening ambition, and even unscrupulous as to the means requisite to effect his objects, he has been further inflamed by the immoderate use of ardent spirits, and in his fits of intoxication knows no bounds to his language or to his actions. Standing responsible for our statements, we place them in your hands to be used as you may think expedient; and are, with perfect respect,

Your obedient servants,

GEORGE GIBBS,
H. A. GOLDSBOROUGH.

Hon. SECRETARY OF STATE,
Washington City.

“HEADQUARTERS, PUGET SOUND DISTRICT,
“*Fort Steilacoom, W. T., March 15, 1856.*

“SIR: I respectfully request that you will at once issue your proclamation calling into the service of the United States two companies of volunteers, to serve on foot, for the period of four months, unless sooner discharged.

“Each company to consist of one captain, one first and one second lieutenant, four sergeants, four corporals, and seventy privates.

"I wish both companies to be mustered into service at Fort Steilacoom.

"The authority for calling for the above named troops has been given by the general commanding the department of the Pacific.

"I received, yesterday, an accession of two companies of the 9th infantry. With this accession of force, and the two companies of volunteers called for, I am of the opinion that I shall have a sufficient number of troops to protect this frontier without the aid of those now in the service of the Territory.

"Very respectfully, your obedient servant,

"SILAS CASEY,

"Lieut. Col. 9th infantry, command'g Puget Sound district.
To his Excellency I. I. STEVENS,

"Governor of Washington Territory, Olympia, W. T."

A true copy.

JOHN NUGIN,

Second Lieutenant 4th infantry, Acting Post Adjutant.

"EXECUTIVE OFFICE, WASHINGTON TERRITORY,

"Olympia, March 16, 1856.

"SIR: Your letter calling upon me for two companies of volunteers, to be mustered into the regular service, has been received, and, in anticipation of my full reply, I will state that the requisition will not be complied with. I do not consider it expedient to change the plan of the campaign, nor the organization of the troops, so far as the volunteers are concerned.

"Truly and respectfully, your most obedient servant,

"ISAAC I. STEVENS,

"Governor Washington Territory.

"Lieut. Col. SILAS CASEY,

"Commanding Puget Sound district."

[Extract.]

"HEADQUARTERS, PUGET SOUND DISTRICT,

"Fort Steilacoom, W. T., May 2, 1856.

"GENERAL:

* * * * *

"There have been no depredations, positively known to have been committed by the Indians, in this district, since about the 7th of March. The enemy are broken into small bands, and, although my last information is to the effect that none of the hostiles have crossed the mountains, with the exception of the four chiefs Leshi, Kitsap, Sta-hi, and Quie-moth, still I am of the opinion that, unless they suc-

ceed in getting a pretty considerable reinforcement from the other side, I shall be able to report this district pacified, within a short time. Exhibitions of private revenge will, probably, take place on both sides for some time; but, as far as my power extends, it shall be controlled.

* * * * *

“Very respectfully, your obedient servant,

“SILAS CASEY,

“*Lieut. Col. 9th infantry, command'g Puget Sound district.*

“Major General J. E. WOOL,

“*Commanding department of the Pacific, Benicia, Cal.*”

A true copy.

JOHN NUGEN,

Second Lieutenant 4th infantry, Acting Post Adjutant.

Messrs. Gibbs and Goldsborough to Mr. Marcy.

STEILACOOM, WASHINGTON TERRITORY,

May 19, 1856.

SIR: Since our communication of the 12th inst., informing you of the transactions of Governor Stevens in this county, events have taken place at Olympia of an equally serious character, which we take the liberty of narrating, simply mentioning that, though not eye-witnesses thereto, we hold ourselves responsible for the proof, and believe that it will not be denied by Governor Stevens himself.

A day or two after Chief Justice Lander was taken to Olympia, he was released from arrest, and Monday, the 12th instant having been appointed by law for holding the United States district court for the 2d judicial district, (his own,) at that place, he opened the same in form and unmolested. On the same day application was made to him at chambers, by two of the prisoners, for a writ of *habeas corpus*. The application was granted, the writ issued, directed to Governor Stevens, and made returnable to the judge at chambers on Wednesday, the 14th. The writ was served on the governor by the United States marshal but no return made thereto. Notice was also served on him on Wednesday, that the judge would be ready at 6, p. m., to receive his return, on which he informed the officer that martial law had been proclaimed in Thurston county, and in effect a proclamation, similar in terms to that relating to Pierce county, had been issued on that day, which, like the former, was neither sealed nor attested.

Upon a report that the volunteer troops were to be marched into court, to break it up, as had been done at Steilacoom, the chief justice ordered the sheriff to summon fifty bailiffs to protect the court, which was done. This was not, however, attempted.

A motion was then made and granted, for a rule that the governor show cause, the next day, Thursday, at 12 o'clock, why a writ of attachment should not issue against him. The order was served, but no

attention paid to it. A motion was then made and granted for a rule absolute, and that an attachment issue accordingly. The writ was placed in the hands of the marshal for service, but he was forcibly resisted in the attempt to execute it, by persons in the governor's employment, whereupon an *alias* was issued.

While the chief justice was engaged at chambers, in the transaction of this business, a military force appeared at the door, under the command of Captain Bluford Miller, of company "K," southern battalion, not a citizen of this Territory, but of Oregon, as were a large part of his men. The marshal was directed not to suffer an armed force to enter the room, and, in the execution of this order, forcibly closed the door and locked it. Captain Miller then called upon Judge Lander to surrender, stating that he had a written order from Governor Stevens to arrest him. On his refusal to obey, the door was burst open, and the armed force entered and arrested him and the clerk. The judge was marched down to the front of the executive office, and, after a short time, Captain Miller came out and informed him that he was authorized by the governor to say that, if he would give his parole of honor that he would not hold court until the proclamation of marshal law was revoked, he should be discharged, to which Judge Lander replied, that he would not give his parole not to do his duty.

The chief justice was then taken by the volunteers out of Thurston county to Camp Montgomery, one of their stations in Pierce county, where he is still detained.

As some influence has been got up at Olympia to show that public opinion there sustains the governor in his course, we desire to call attention to the fact that the public meeting at that place was held on Monday, the 12th, previous to the transactions we have just stated; that out of those present forty persons voted for the resolutions sustaining the governor, and twelve against, as appeared by a show of hands, while the greater number did not vote at all, and that, as we are positively informed, the persons voting in approval were nearly all either volunteers or persons in his pay in various civil capacities, commissaries, clerks, &c.

We can now state, on the authority of one of the members of the military commission, that it is to be held at Camp Montgomery, twelve miles from this place, to-morrow, (Tuesday, 20th;) that it is to consist of Lieutenant Colonel Hurd, an aid of Governor Stevens, Major Maxon, and Captain Swindall, of the southern battalion of volunteers; and to subjoin a copy of the charges against one of the parties, Charles Wren. The others are supposed to be similar in effect. Ex-Judge Victor Monroe has been retained as prosecutor.

We are positively assured, by persons belonging to the volunteers, that the report has been circulated among them that unless they sustain Governor Stevens in his course, they will be dishonorably discharged, and will receive no pay. Humiliating as it is to believe that such a motive can actuate men in supporting oppression and usurpation, we fear that it has done so. It is our intention to keep you advised of the progress of events here, and especially the issue of this star chamber tribunal. We seriously fear that bloodshed must result

from the governor's course, and assure you that you cannot too much hasten to supersede him.

We are, sir, your obedient servants,

GEORGE GIBBS,
H. A. GOLDSBOROUGH.

Hon. SECRETARY OF STATE,
Washington City.

P. S. Subsequently, Lieutenants Shepherd and De Lacy have been added to the commission—all of them of the volunteers, and not one of them acquainted with law, martial or civil.

G.

Charge and specifications of charges against Charles Wren.

Charge.—Aiding and comforting the enemy.

First specification.—In this, that during the period between the 1st of June, 1855, and the 20th of April, 1856, the said Charles Wren did in divers ways exhibit friendship for, and did give aid in furnishing shelter to certain Indians at war with the United States during a part of the above period.

Second specification.—In this, that the said Charles Wren did pretend to a right to be neutral in a war which he, as a citizen of the United States, was bound to give and [aid] to the military of the United States; and that he neglected to give information relative to the movements of the marauding bands of Indians engaged in unlawful war, when he could have given such information conveniently, but did not, until the possibility of such information being useful to the military of the United States had ceased from lapse of time.

Third specification.—In this, that the said Charles Wren was cognizant of the designs of certain Indians to make war upon the citizens of the United States in Washington Territory, and did not use any endeavors to prevent such unlawful war, nor inform the authorities of said Territory of such designs.

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

JAMES TILTON,
Adjutant General W. T. volunteers.

True copy from the original.

GEORGE GIBBS.

Judge Lander to Mr. Marcy.

CAMP MONTGOMERY, *May 22, 1856.*

SIR: It has never been my wish to trouble the department with complaints, nor should I now address you had I not thought that my silence respecting the occurrences which have lately taken place in

this Territory might be construed into an acquiescence upon my part in what has been done.

I also learn that Governor Stevens has made a statement, and it becomes my duty, therefore, not to be silent. I regret that, held as a prisoner as I am at this place, thirty miles from my residence at Olympia, the correspondence between myself and Governor Stevens, and the papers that would save me from making the narrative of the transactions depend upon my veracity alone, are not at my command. All these are at Olympia, and as I may not be able to go there for some time, I have not thought it best to delay any longer this communication. Fully to understand my connexion with these transactions, as will be seen hereafter, I would state that, at the first breaking out of the war in this Territory, when there were on the Sound but few troops, I accepted from Mr. Mason, then acting governor, the appointment of aid, not to interfere with my judicial duties, supposing that my former experience in such matters might be of some little service to him in helping to organize and muster the few companies he called into service. As this was during the time of holding the terms of the court in my district, I could have been and was of but little assistance.

On the arrival of Governor Stevens I had always supposed that appointment ceased.

The day after the attack upon Seattle I came to that place, and found many of the inhabitants ready to leave, and others anxious to organize for defence of the county and town. At their request I remained there and took command of the small force of citizens, and have been occupied for the last three months until May in helping to protect the section of the country back of Seattle. I did not suppose that this interfered with my duty as a judge. It was during vacation, and in defence of a county where the Indians have swept away nearly all the stock, burned every house and barn but two, and, until a fort or blockhouse was erected, left the town as the only and last refuge to the people, finding their safety under the guns of a man-of-war.

When the time came for holding the term of the district court at Seattle, at the request of Judge Chenoweth, sent through his clerk to me, he being unwell, I held the court for three days, transacting some necessary business. During the week I received a note from Judge Chenoweth, stating that he was still too unwell to leave home, and requesting me, as a favor which at some time he would do for me, to hold the term at Steilacoom for him the next week. I should have stated that in this Territory I have had occasion at several times to hold terms of the district court in other districts when the judge was unavoidably absent, and have always considered it my duty to do so. This practice was, I know, followed in Oregon while Washington was a part of that Territory, and I presume is usual there now.

I had heard that martial law had been proclaimed in Pierce county, but had not seen the proclamation giving the reasons for it, and supposed, now that the term of court was approaching, that it would be removed, especially as from my own information through the Indians giving themselves up, I became satisfied that the leading war chief, with his best men, had crossed the mountains to join the Yakima

tribe, and that the few Indians who remained had broken into small parties, and were seeking to hide away from pursuit. Before leaving Seattle I prepared a resignation of all military offices which I might be considered to hold.

I did not arrive at Steilacoom until nearly noon upon Monday, and learned from the clerk that both the grand and petit jurors were in attendance, and that there was a large docket. I at once started for the court-house, and on my way was met by Lieutenant Colonel Shaw, of Washington Territory volunteers, who handed me a note directed to me as Lieutenant Colonel Lander, which stated that Lieutenant Colonel Shaw was ordered to enforce martial law in Pierce county, and directed me to co-operate with him. I declined to do so. He also told me he was prepared with force enough to stop the court, and should do as he had been ordered at all hazards. I then met Mr. De Lacy, who I understand has the appointment of topographical engineer on the staff of Governor Stevens, and was told by him, in substance, that the governor did not wish any trouble, and that he would be satisfied if the court would merely meet and adjourn until some time in June, and that by that time the men held in custody by him would have been tried by a military commission.

Satisfied from what I had seen and heard of the feeling of the people collected in town, that there was imminent danger of loss of life if Lieutenant Colonel Shaw attempted to stop the sitting of the court by military force, I told Mr. Shaw that the court would meet and adjourn and that no business would be done until Wednesday morning, by which time the governor could be heard from, and that I would myself forward by his express a letter to the governor on the subject. I was led to adopt this course from a most anxious desire to avoid all difficulty; and I believed that if a proper opportunity was afforded to the executive he would withdraw his proclamation, leave his prisoners to be tried by the civil courts, and stop probably all questions as to the legality of his course. In the note I stated in substance to the governor that there was important business before the court, mentioning one cause in which the United States was a party; (to circumstances connected with this case I wish to call attention hereafter.)

I further stated that there was imminent danger of collision between the citizens and volunteers, and also that, in my opinion, the law did not provide for any term of the court being held except in that week. I forwarded also the resignation mentioned before, as this was the first opportunity, stating in it that I had always considered the appointment of aid as personal to Mr. Mason, and as having ceased with him, but if there was any doubt upon it, I resigned any and all commissions I might be understood to hold. To these two notes the governor replied on Tuesday, refusing to accept the resignation, and informing me that he found no difficulty in the court adjourning until June, from an examination of the law.

The difficulty *not* found by the governor had been caused by a construction put upon the statute at a former term, and acted upon afterwards with which the governor's construction would conflict.

I had, while waiting for an answer from governor Stevens, called upon Lieutenant Colonel Casey, commanding United States troops at

Fort Steilacoom, and told him in conversation that I did not think that I should call upon him to protect the court. In reply he told me that no troops would be furnished for that purpose. I did not authorize the sheriff to call out the posse comitatus. The excited state of mind in the citizens seemed to forbid it. No crowd of excited people, no small force of military can ever, in my opinion, consistently and properly defend the dignity of a court of justice. An overwhelming force, which would overawe without conflict, alone would answer. Such a force could not be obtained, and I determined to trust to the bailiffs of the courts alone, hoping that the respect in which courts were held would protect from outrage, and not wishing to cause bloodshed even in the defence of right.

On Wednesday, at the usual hour, at the court-house, the court was opened, when a body of armed men under a lieutenant entered the room, and were placed across the court-house behind the bar, and facing the bench. Lieutenant Colonel Shaw and Captain De Lacy accompanied these men, who, though in the service of Washington Territory, were all of them, with their officers, residents of Oregon. The calling of the grand jurors was proceeded with, and they were empanelled and sworn with but little interruption. Colonel Shaw then proclaimed aloud that he was ordered by Governor Stevens to stop that court, and ordered his men to advance and seize the judge. The deputy marshal had been ordered to prevent the entry of armed men within the bar, but not to cause bloodshed. He was forced out of the way. I requested the gentlemen of the bar, who had risen much excited, to keep their seats, and the next moment my chair was surrounded by armed men. I had been told that many citizens were present armed with revolvers; and fearing that in the excitement some one might be shot down, I directed the crier to adjourn the court, which he did. I then left the bench, surrounded and followed by the lieutenant and his men. At the foot of the stairs another company was drawn up in line. After a short delay I was taken, together with Mr. Chapman, clerk of the district, who had been seized in the courtroom with me, and the records taken into possession, and afterwards restored, and carried through the counties of Pierce and Thurston, in which last county no martial law had then been proclaimed, to Olympia, to the office of the governor. I was then informed by him I was no longer in the custody of the guard. Mr. Chapman was detained in Olympia till Saturday, and then released. On Monday, the 12th instant, the term of the district court in the second district commenced at Olympia. On Tuesday afternoon, after adjournment, a petition for a writ of *habeas corpus* was filed before me at chambers, setting out that seven persons, naming them, were held in confinement at Olympia by Governor Stevens under the charge of giving aid and comfort to the enemy. The writ of *habeas corpus* was issued and returned, served by the marshal. Early on Wednesday a proclamation of martial law, of which I enclose you a copy, was found posted up. The court continued in session undisturbed through Wednesday. A rule was granted to show cause why an attachment should not issue, to which no attention was paid. Attachment then issued; on this the marshal returned, that in an attempt to serve it he had been forcibly

resisted by Governor Stevens. At this time the same company employed in breaking up the court at Steilacoom came to the building under their captain. The marshal was directed to keep them out. After waiting some little time the door was broken in, the officer showing a written order, which he said was from Governor Stevens. The room was filled with armed men, the deputy clerk and myself taken from it, marched down the street, and halted in front of the governor's office. The officer went in, and, coming out, informed me that if I would pledge myself to hold no more courts while martial law is in force, I could be released. As I could not accede to this, I told him so. I presume he so informed the governor, for, again coming out, he told me that by the governor's order I was to be taken to Camp Montgomery, to which place I have been brought, leaving Olympia in an hour after the seizure, and still remain here. Much unfinished business of importance was left on the docket at Olympia, the same as at Steilacoom.

I have stated the progress of this hearing at Olympia more fully, as no copy of the proceedings can be had from there.

The captain, officers, and privates of the company, selected for the purpose of thus enforcing martial law are all residents of Oregon, though at this time in the service of Washington. There are companies of the citizens of Washington Territory in service as volunteers, but the militia of the Territory has never been called on as such.

I have thought proper also to follow in detail these transactions, certainly not for the purpose of complaining of personal indignity. I can feel no source of personal degradation, though exhibited as a public spectacle in the streets, kept waiting at the door of a governor's office, nor in being placed in confinement in common with men charged with treason. Personally, these are very small matters; but, as everything that tends to degrade and lower a judge or court in the public mind is of itself important, these facts assume importance, and have been mentioned.

I believe I have furnished as plain statements as I could of everything that has been done without feeling. As before stated, I have felt impelled to do it contrary to my own wish. It may not be improper to add, that a military commission of five volunteer officers is now sitting at this camp to try three of the prisoners for whom a writ of *habeas corpus* issued. The charge is, "giving aid and comfort to the enemy," with their specification, the particulars of which I do not pretend to state.

As to the condition of the Indian war in Pierce county, at the time of the proclamation of martial law, occupied as I have been in a county forty miles north of it, I can make no statements from personal observation, and therefore wish to say nothing. It seems to me that the reports of the officer commanding the United States troops, stationed at Fort Steilacoom, within a mile of the county seat, would be the best authority.

The reasons set forth for the proclamation of martial law, as shown in the documents themselves, forwarded with this communication, would seem to show that in both instances martial law was proclaimed after the writ of *habeas corpus* had been issued, simply to insure the

trial of men charged with what seems to be "treason" before a military tribunal. As an excuse for this, no dereliction of duty can be charged upon any court officer, nor any weakness in the administration of the law, as no steps have ever been taken to bring these men before the civil authorities.

The right of the executive to abrogate all civil law is believed in by many citizens. What the law is cannot be known through the proper channels. Neither court nor any judge can have the opportunity to declare what is the law.

Silence is enforced by arms. Courts cannot set to determine it, nor judges even to hear argument.

Public meetings will not be resorted to, and published statements will never be made by me to declare my views or to define my position. Placed here to administer the law, I hope to be able to do so without prejudice at the proper time.

I need not advert to the gravity of these acts of the executive. The facts shown by this narrative, and the proclamations, speak for themselves; no language of mine can add to them.

Since these transactions, I have again examined the course I have deemed it my duty to pursue, and can only regret that I had not in some instances acted more promptly; and while I also most deeply regret the present condition of affairs, exhibiting as it does, in direct opposition to each other, two branches of this government, yet I cannot feel that it was my duty to have acted differently; had I done so, I should, in my own opinion, have been unworthy of the place I hold, unfaithful to the trust I have undertaken to discharge.

I am, with respect,

EDWARD LANDER,
Chief Justice, W. T.

Hon. WILLIAM L. MARCY,
Secretary of State.

PROCLAMATION.

"Whereas, in the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion; such, 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 the said county, and great injury to the public, and the plans of the campaign be frustrated, I, Isaac I. Stevens, governor of the Territory of Washington, do hereby proclaim martial law over the said county of Pierce, and do by these presents suspend for the time being, and until further notice, the functions of all civil officers in said county.

“Given under my hand, at Olympia, this 3d day of April, eighteen hundred and fifty-six, and the year of the independence of the United States the eightieth.

“ISAAC I. STEVENS.”

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 13th day of May, in the year of our Lord one thousand eight hundred and fifty-six, and the year of independence the eightieth.

ISAAC I. STEVENS.

Mr. Evans to Mr. Marcy.

OLYMPIA, WASHINGTON TERRITORY, *May 25, 1856.*

SIR: I have taken the liberty of addressing you in regard to a single allusion in the enclosed “Vindication” of Governor I. I. Stevens for “proclaiming martial law” to suspend the writ of *habeas corpus*, and enforcing it by breaking up courts and kidnapping the judges and clerks thereof. I may, however, preface this by advising you of the fact that Chief Justice Lander and myself were arrested in this place on the 15th instant; he while sitting as judge at chambers, I, acting as clerk of this district, for the regular clerk, who was necessarily absent on public service connected with the war. The arrest was made by a company of volunteers from the Territory of Oregon. The house in which we were sitting, (after a formal demand to surrender by the captain,) was forced open and we seized by armed men and paraded through the street, down in front of the executive, like trophies of a conquest. That humiliation is excessively hard to bear—

its moral effect is certainly most hurtful on the public mind. There should be a respect for the administrators of justice, a public opinion that acts as the great protector of the dignity of the law. I was very soon discharged from custody; and can you believe that Governor Stevens offered, through Captain Miller, the chief justice his liberty, if that functionary would refuse to grant writs of *habeas corpus*, and hold no more courts until his excellency removed the "martial law." Judge Lander, proudly rejecting the base and contemptible favor, is now, as a (I) write, a prisoner at the block-house at Camp Montgomery, in Pierce county, a distance from here of probably forty miles. His only offence was that he issued the most gracious writ of *habeas corpus*. My offence was that I officially tested it. I would not now trouble you, did I not fear that the judge being absent from here, with no recourse to the mails, save *through the governor's expresses*, that his silence, and that of those who know the facts, may be construed as admissions of our willingness to silently bear the outrages imposed upon us by the present executive.

You will see on page 7, *italicised* by the governor, the phrase to which I wish to direct your attention. It is a contemptible and unmanly inuendo against the chief justice, based upon affidavits for a *change of venue*, from which the inference may be drawn that defendants have reason to fear the *corrupt prejudice* of a judge. Governor Stevens dare not openly charge Judge Lander with corruption; he knows too well that such a charge is not supportable. I may be pardoned for saying that if he did believe it, it would have been better for him to have entered the proper avenue and accused the judge, rather than appeal as a demagogue to public opinion and attempt to excite prejudice against an independent but co-ordinate branch of our government.

A change of venue might be necessary and right in case of prejudice of the judge, but I really look upon it in this Territory as but another invention to secure the "law's delay." The affidavit needs only charge prejudice—it is not traversable; it need not say the reasons of the prejudice—but upon its being made the change is granted, *ex debita justitiæ*, and, as our districts are arranged, it never fails to secure six months delay to the party applying.

In both the causes alluded to I was of counsel, at some period, whilst they continued in Thurston county. In both I was associated with Judge Victor Monroe, who, I regret, is now absent on professional business, or I think he would concur in the statement I am about to make. The cases were *United States vs. J. P. Moses*, the other, *Wills vs. Miller*, foreclosure of mortgage.

The first was an action on the bond of collector, and commenced in 1854—this was a second suit; the first, in which we were the counsel, being nonsuited.—November Term, 1854. In May, 1855, the defendant applied for change of venue on account of prejudice. In this suit he acted as his own counsel, but consulted me as to the change. I remarked it was a serious matter to charge upon the judge, and that personally I could not countenance such an application. He took his own course, and I doubt not he felt convinced he had good grounds to him for the suspicion he entertained. What they were I never

yet have learned; but I can say with confidence that I know that gentleman would not now make such an affidavit. Since these difficulties began, he has asserted, with a candor that does him credit, and in keeping with his generous impulses, that he would not now object to be tried by Judge Lander. That case was on the docket in Pierce county, and had it been reached, and the United States ready for trial—whilst I know the judge would not have entertained the case without the written consent of the defendant filed—yet I believe that Judge Lander could have progressed in that case equally with Judge Chenoweth, and that *the defendant would have agreed thereto*. I will say that he would not have renewed his charge through desire to continue it; he has so expressly stated to me.

In the suit of *Wills vs. Miller*, before this application for a change of venue was made, plaintiff had moved to dismiss our answer, and take a judgment, our defence being in the nature of an equitable set-off to the mortgage debt. The argument on the motion had been made, and the opinion of the court was to be given in the afternoon, and it looked as judgment would certainly be against the defendant. Against Judge Monroe's advice, and my earnest remonstrance, he went into court and applied for a change of venue. We instantly abandoned his case, and both assured the court that we entirely disapproved and censured the course of a refractory client. Being the junior counsel, I was requested to write the affidavit. I refused to allow my handwriting to appear in such an application, and would not consent. Judge Lander suggested that the defendant was entitled to this assistance, remarking substantially: "Every defendant has a right to trial where he believes he can secure justice, and by a judge against whom he entertains no suspicion; the court was not conscious of any prejudice, but he wished every party whose case he tried to believe, so far as the court was concerned, that it had been properly disposed of." The change was made, and the plaintiff applied for the appointment of a receiver, filing the affidavit as to waste, &c. The court declined to entertain the motion, so sensitive was he as to defendant's rights. In this case I boldly assert, without a desire to impugn Mr. M.'s motive, that I do not believe that any ground for such an affidavit ever existed. I am advised that Mr. M. has lately expressed a desire to submit the whole matter to referees appointed by court; and I have no doubt that, had the court not been kidnapped in Pierce county, the defendant's *written consent* to Judge Lander making such an order, would now be on file in the clerk's office of that county; though at present I am not in the case, I can assure you that Mr. M. feels extreme mortification that Governor Stevens has derived what he seems to think a *good reason for enforcing martial law*, from an affidavit of Mr. M., made six months ago.

Pardon the length of this, but believe me, with great respect, &c.,

ELWOOD EVANS.

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