

round the standard of their country.— Their effects, however, would have been unavailing if the disaffected had been permitted to counteract them by their treason, the timid to paralyze them by their example, and both to stand aloof in the hour of danger, and enjoy the fruit of victory without the danger of defeat. A powerful, disciplined, and royally appointed army was on our coast, commanded by officers of tried valor and consummate skill; their fleet had already destroyed the feeble defence on which, alone, we could rely to prevent their landing on our shores; their point of attack was uncertain—an hundred inlets were to be guarded by a force not sufficient in number for one: we had no lines of defence; treason lurked among us, and only waited the expected signal of a defeat to shew itself openly. Our men were few, and not all of those few were armed; our prospect of aid and supply was distant and uncertain; our utter ruin, if we failed, at hand and inevitable; every thing depended on the prompt and energetic use of the means we possessed—on putting the whole force of the community into operation; it was a contest for the very existence of the state, and every nerve was to be strained in its defence. The physical force of every individual, his moral faculties, his property, and the energy of his example, were to be called into action, and instant action. No delay, no hesitation, no enquiry about rights, or all was lost; and every thing dear to man, his property, his life, the honor of his family, his country and its constitution, were swept away by the avowed principles, the open practice of the enemy with whom we were to contend. The fortifications were to be erected, supplies procured, arms to be sought for, requisitions to be made, the emissaries of the enemy to be watched, lurking treason to be overawed, insubordination to be punished, and the contagion of cowardly example to be stopped.

In this crisis, and under a firm persuasion that none of these objects could be effected by the exercise of the ordinary powers confined to him—under a solemn conviction that the country committed to his care could be saved by that measure only from utter ruin—under a religious belief that he was performing the most important and sacred duty, the respondent PROCLAIMED MARTIAL LAW. He intended, by that measure, to supersede such civil powers as in their operation interfered with those he was obliged to exercise. He thought that in such a moment, constitutional forms must be suspended for the permanent preservation of constitutional rights, and that there could be no question whether it were better to depart for a moment, from the exercise of our dearest privileges, or have them wrested from us forever. He knew that if the civil magistrate were permitted to exercise his usual functions, none of the measures necessary to avert the awful fate that threatened us, could have been effected. Personal liberty cannot exist at a time when every man must be a soldier. Private property cannot be secure when its use is indispensable for the public safety. Unlimited liberty of speech is incompatible with the discipline of a camp; and that of the press is more dangerous still when it is made the vehicle of conveying intelligence to the enemy or exciting to mutiny in the camp. To have suffered the uncontrolled enjoyment of any one of those rights, during the time of the late invasion would have been to abandon the defence of the country: the civil magistrate is the guardian of those rights: and the proclamation of Martial Law was therefore intended to supersede the exercise of his authority so far as it interfered with the necessary restriction of those rights, but no further.

The respondent states these principles explicitly, because they are the basis of his defence. and because a mistaken notion has been circulated that the declaration of martial law only subjected the militia in service to its operation; this would, indeed, have been a very useless ceremony, as such persons were already so subject without the addition of any other act; and besides, he believes that if the proclamation of martial law were a measure, (he means a measure without which the country must have been conquered & the constitution lost,) then it forms a justification for the act. If it does, in what manner will the proceeding by attachment for contempt be justified? It is undoubtedly and strictly a criminal prosecution, and the constitution declares that in all criminal prosecutions the accused shall have the benefit of a trial by jury; yet a prosecution is even now going on in this court where no such benefit is allowed.— Why is this? From the alleged necessity of the case, because courts could not, it is said, subsist without a power to punish promptly by their own act, and not by the intervention of a jury. Necessity then may, in some cases, justify the breach of the constitution; and if, in the doubtful case of avoiding confusion in a court, shall it be denied in the serious one of preserving a country from conquest and ruin? The respondent begs leave to explain, that in using this argument he does not mean to admit the existence of necessi-

ty in the case of attachment; but to shew that the principle of a justification from necessity is admitted even in that weaker case. That the legislature of the United States have given to courts the power to punish contempts is no answer to this head of defence, for two reasons—first, because the words of the law do not necessarily exclude the intervention of a jury; and secondly, if they do, that the law itself is contrary to the words of the constitution, and can only be supported on the plea of necessity; to which head it is referred by the English writers on the subject.

The only responsibility which it is thought has been incurred in the present case is, that which arises from the existence of the necessity. This, the respondent agrees must not be doubtful; it must be apparent from the circumstances of the case, or it forms no justification. He submits therefore, all his acts to be tested by this rule. (To be concluded in our next.)

### INTERESTING Foreign Intelligence.

LONDON, MARCH 20.

**The Rebellion in France.**—Rebellion in that devoted country which engrosses all our attention, so far from being checked, as was fondly imagined, has extended from the military to the people; and from Lyons to Dijon, a distance of 41 leagues, the populace have universally declared in favor of Bonaparte, destroyed or seized the means of resistance which have been prepared by the friends of government, expelled the magistrates, and proceeded even to the greatest acts of violence against their persons. Such is the gloomy intelligence which is announced in the *Moniteur* of Thursday last, which reached us last night. At Mâcon, which is precisely 12 leagues from Lyons, on the direct line to Paris, and where the people were represented by abbe de Montesquieu, in his report to the chamber of deputies, to be staunch in favor of the royal cause—at Mâcon, we regret to say, the populace attacked, with the utmost fury, the prefect and the other members of the civil administration, who escaped with the utmost difficulty, to Châtillon, on the Seine.

In this latter city the same symptoms of disaffection burst forth, and were attended with the same unhappy results; the servants of the government were obliged to fly; but here the rage of the multitude proceeded even to the commission of more violent excesses; "they threw themselves with fury," such are the words of the official paper, "upon some species of artillery, and flung them into the Seine. The prefect fled to Autun." Those two cities are the department of the Seine and Loire. But in the next department that of the Côte d'Or a similar explosion took place, and the same consequences ensued. At Dijon, the seat of the prefecture, and a city containing more than 30,000 inhabitants, the constituted authorities were in like manner expelled by the deluded populace, and the prefect was obliged to fly to Châtillon, on the Seine.

MARCH 25.

**Escape of Bonaparte.**—The escape of Bonaparte from Elba will become a matter of serious and strict investigation, which is now rendered the more necessary, not only by the lamentable and unlooked for success of this astonishing adventurer's enterprise, but by the injurious statements sent abroad, a refutation of which is indispensable to the characters of the parties concerned, and particularly that of the British government. It has been stated in the political circles, as a fact, emanating from very high authority, that before the departure of the duke of Wellington from Paris for Vienna, a representation was made by the French government, through his grace to the British cabinet, intimating certain suspicious circumstances in Bonaparte's conduct, and requiring a squadron of British frigates, as a further safeguard against his escape, and to prevent the execution of any dangerous designs that he might have in contemplation. To this requisition, an answer was, we are told, returned in the negative, on the ground that the French government had ships of its own, and that it was unreasonable to place the charge and expense on the British nation under such circumstances. This answer would exhibit a total oversight of the danger of a French force being corrupted by Bonaparte, and the superior security of a British protective force in every point of view.

But the currency of such a report, however unfounded, is, as we have said, a strong ground for investigation. Another injurious idea very prevalent on the continent, according to accounts from other quarters, as well as that in the subjoined letter, is, that the English were purposely deficient in vigilance, or even favored the escape, with the view of renewing the war, and regaining the exclusive commerce enjoyed by this country during the recent contest. Nothing can be more false than this imputation; but it is an additional reason for investigation and explanation. The annexed letter has been received by a respectable house in the city.

LEGHORN, March 2.

Before this reaches you, you will doubtless have heard (as special messengers are this day sent off to all the courts of Europe), that Bonaparte has escaped from the island of Elba, with the whole of his officers and troops.— It is not known where he is gone, but France is supposed to be his object.

"This naturally creates much conversation here, and is wholly ascribed to the negligence of the British government or its agents. It was never possible to keep him there by force, when he possessed the sovereignty of the island, and while Porto Ferrajo was allowed to be garrisoned by his own troops. The town is considerably stronger than Malta and Gibraltar, so that all the forces of Europe could not take it, except by starvation, and if the whole British navy surrounded the island, he might get across to Piombino in an open boat, during the night. Perhaps, the principal blame ought to rest with those who granted him so strong a place, and so near the main land.

"The moderate Italians say, they think his departure, if not sanctioned, is not altogether disapproved of by the British government, otherwise they would not have considered an old dull sailing sloop of war (the *Patridge*) a sufficient naval, and one man, a sufficient military guard over him; more particularly as this military agent has principally resided here, and at Florence, going only occasionally to Elba; and the naval officer could not but have known of the preparations during the two last trips here, as they were the subject of general conversation in the island, and in this port likewise. The *Patridge*, with Colonel Campbell on board, arrived a few hours after his departure, and went in pursuit.

"The more violent Italians say, they are convinced that the British government, finding that peace did not afford the country the expected blessings, but that war was more favorable to commerce, have winked at his departure, that he might kindle the flames of war afresh. Knowing their reasonings to be false, we cannot but regret that more precautions have not been taken."

PARIS, MARCH 26.

The Prince of Orange, without waiting for the definitive decision of the congress at Vienna, has taken the title of king of the Low Countries. We have reason to believe, that this step has not been taken in concert with the allied powers.

This resolution is the consequence of the feudal principles, which they are seeking to re-establish in Europe; the people are the property of certain families, destined to reign everlastingly, by virtue of a right called *Divine*. The absurdity of these principles has been demonstrated a thousand times; and in fact, it can only be supported by one argument, that of force, which is the last reason of kings.

It is according to this principle that the greater part of Saxony has been delivered to Prussia, against its wishes and its interest, and that the republic of Genoa has been united to Piedmont, in spite of the energetic protestations of the people and magistrates.

MARCH 23.

Letters from Bordeaux since the 20th, state, that some cries of *vive l'Empereur* have been heard. Some pedlars who were selling the proclamations of the king, were accosted by some soldiers, who told them they had better cry those of Napoleon.

The addresses of staffs, or corps of troops of every kind, of assemblages of officers, of administrative and municipal authorities, of national guards, of cities, &c. &c. arrive from all parts. We will not publish the text of these addresses, they all contain in energetic and concise terms the expression of the sentiment of exultation which has shone forth from the bosom of our garrisons, in the cities and in the country, the moment news was received that the emperor had arrived within the French territory. The following may be considered as the analysis and substance of these addresses.

"France and the emperor (it is said in them) are no more separated.— France, in losing her prince, had lost her power, and that sentiment of her glory to which she owed so many memorable actions. That army which had merited so well of the country had been the object of a shameful abandonment; the brave were overwhelmed with humiliation and disgust; a small number of privileged persons had usurped their titles, their grades, their honorable recompenses; recalled, by the wish of a people threatened with the return of ancient servitude, recalled by the wish of the brave who had always been faithful to him, the emperor has again appeared; and the sentiment of national honor and of the greatness of our institutions has sprung up in our hearts; we swear to live and die under the laws of the emperor and his dynasty."

Such are the expressions which we find contained in a crowd of addresses among which we have particularly noticed those of, &c. &c. &c. (mentioning a large number of addresses.)

Moniteur.

NAMUR, MARCH 14.

The news of the decision of the con-

gress to place us under the prince of Orange threw all the Belgians into consternation. The general illumination ordered was more like a funeral celebration; the populace shouted long live the French, long live the emperor Napoleon. At Liege at the theatre, the news that they had become Hollanders was received with the same cries. The mayor was told by the Prussian commandant that if he did not stop these commotions, thirty thousand troops should enter the city. In attempting to quiet them he was received by the renewed shouts of long live the emperor Napoleon. To punish the citizens a fine of 600,000 francs was imposed.

LONDON, MARCH 29.

**Decrees of Bonaparte.**—All the emigrants who have entered France since the 1st of January, 1814, are commanded to leave the empire. Such emigrants as shall be found 15 days after the publication of this decree, (dated 13th of March) will immediately be tried, and adjudged by the laws established for that purpose, unless they can prove ignorance of this decree, in that case they will merely be arrested, sent out of the French territory, and have their property sequestered.

The troops and populace at Brest, Calcutta, and other places have declared for Bonaparte.

A vessel is arrived at Dieppe, which she left at midnight on Sunday. Several persons are come over in her, some of whom left Paris on Friday night. They state that Bonaparte sent 26,000 men towards Lisle, to watch the motions of the king's troops, but not to proceed to hostilities unless they were attacked.

MARCH 30.

The reports as to Austria do not agree. While one article states that the archduke Charles was to escort Bonaparte's wife to Paris with 25,000 troops, another says, Murat acts for Bonaparte, and has cut off an Austrian army.

If the continental powers tolerate Bonaparte again, it will only be on condition of his agreeing not to be again an enemy to free trade and equal rights on the ocean; that there shall be on his part no illegal burnings at sea, or seizures in port.

Upwards of 40,000 Englishmen were said to be in France when Bonaparte commenced his new career.— Their countrymen, who trusted to his magnanimity and the rupture of the treaty of Amiens, having been cruelly deceived, and suffered a long captivity, the present visitors of France have thought it best to hurry home. They were very welcome, as they drained England of much money—many of them being rich, and deriving their income from England, and spending it in France.

The embarkation for Belgium still continues with great activity in all parts of the coast opposite to France.

Our naval preparations keep pace in activity with our military. Orders have been issued to suspend the discharge of seamen and marines. A formidable fleet will soon be ready; several men of war have already sailed from Portsmouth and Plymouth with sealed orders.

A letter from Gibraltar the 8th inst. says, that 20,000 Spanish troops have suddenly made their appearance in the vicinity of Gibraltar. The garrison in consequence, is on the alert; all the cannon are loaded, and the barrier guards doubled.

LEGHORN, FEB. 3.

It is reported that a young Corsican named Theodore Ubaldi, having been several days at the island of Elba at last succeeded in gaining the confidence of Bonaparte. This young man actuated, as it is thought, by some old family grudge (nothing in the world else!) approached the chief of the island, and at the moment when he was engaged in reading a paper, attempted to strike him with a stiletto, the point of which was blunted by falling upon the steel of his braces. Bonaparte seized, disarmed and delivered him to one of his guards, ordering him to be given up to the officers of justice.

FRANKFORT, FEB. 5.

**Late king of Sweden.**—The following is the declaration which was transmitted by the *ci devant* king of Sweden, now calling himself duke of Holstein Eutin, to sir Sidney Smith, to be laid before the congress at Vienna.

#### "DECLARATION.

"Strong in my rights, as well as in the sacred duties imposed upon me, I have always been as proud to maintain the first, as scrupulous to discharge the second. Having been the victim of the revolution of 1809, when the Swedish nation thought it necessary to sacrifice its king to its political interests, my act of abdication was the consequence. As a prisoner I wrote it and signed it with my name, declaring the act to be a free and voluntary one. But, considering the present state of things, I regard it as a duty to reiterate that declaration; incapable of prevaricating on my own rights, I would never have been forced to sign an act contrary to my principles and my manner of thinking.

"I also declare that I never abdicated in the name of my son, as has been industriously rumored in public. I had

no right to do so—and hence I could not have done so without dishonoring myself. But I hope my son Gustav when he arrives at maturity, will know how to act in a manner worthy of himself, of his father, and of the Swedish nation, which has excluded him from the throne of Sweden.

"Done and signed by me this month of November, in the year of our Lord 1814.

"GUSTAVUS ADOLPHUS, Duke of Holstein Eutin.

**A late letter from Marseilles.**—says, "There were at Marseilles between 8 and 900 English travellers, who were unpleasantly situated, as the French were generally impressed with the idea that the English government had connived at Bonaparte's escape from Elba; and some existing circumstances seemed to corroborate, or at least add faith to this unfounded opinion. In consequence of this, many were anxious to leave the country.

"The English have evacuated Genoa, and the king of Sardinia had taken possession in due form, but without one solitary demonstration of joy.

"Prince Murat was with his army near Rome, consisting of 85,000 men.

**The Plantagenet of 74 guns,** capt. R. Lloyd, which brought the distressing news of the disasters at New-Orleans to Portsmouth last week, left the fleet under sir A. Cochrane lying off the Chandler islands, on the 18th, and the Havanna on the 28th January; the troops were all on board the ship of war. It was understood that sir Alexander would leave the Gulf of Mexico in a few days, to carry into effect the other parts of his instructions relative to the expedition. It is with much satisfaction we hear that our soldiers are recovering very fast from their buckshot wounds. The lamented Sir Edward Pakenham, it is stated, immediately after he took the command, and reconnoitred the enemy's position, expressed a decided opinion, that the expedition would not be attended with success. But, finding the army ready to be led on upon the enterprise, and the almost universal opinion against his own, he was induced to try the fortune of the event. Upon Gen. Gibbs being wounded, and carried off the field, he took the advance, and soon afterwards was wounded in both knees. This unfortunate event, however, did not induce him to desist from leading the troops; but almost immediately afterwards a ball entered his groin; he uttered the words—*Teil general!*—when life departed; he fell from his horse into the arms of major Macquogall, and expired.

Thus, fell, in the 38th year of his age, one of the most experienced, spirited and accomplished soldiers in the British army. His services, as quarter master general to the army under the duke of Wellington, (his brother-in-law) were highly appreciated. Saturday afternoon his body was brought on shore at Portsmouth from the Plantagenet (being preserved in rum,) and deposited in a leaden cask, and shell, for conveyance to London in a hearse and four. The body of Gen. Gibbs has also been sent home. This highly esteemed officer is likewise a pitiable loss. There came passengers in the Plantagenet, cols. Brooke and Thornton, major and capt. Wyvill, and captains Percy, Sullivan and Money.

MARCH 23.

The mails have brought us Paris papers of the 22d and 23d. As we view the contrast between those of the 20th and the subsequent ones, we can hardly persuade ourselves that we see and read with accuracy. All appears a dream—a disturbed, painful dream.—The *Moniteur* of the 20th, filled with addresses of attachment and fidelity to the king. The *Moniteur* of the next day full of proclamations of Bonaparte, and addresses of attachment to him! The legitimate monarch in his palace on the Sunday—the usurper in the same palace on the Monday! And all this without a battle or bloodshed—with almost as much facility as the changes of scenery in a play.

Lord Cochrane, who had escaped from the king's bench prison, has been arrested, before the hour of sitting, in the hall of the house of commons, where he had been secretly introduced at the moment when he was calmly perusing a pamphlet containing the different grievances which he had presented to the house.

The Belgic Journal mentions that the fortifications at Lisle are inundated as though they expect a siege.

They write from Vienna that the city of Courtray had demanded of the congress to be re-united to France.

AUGSBURG, MARCH 9.

The Austrian troops in Tyrol are marching for Italy, &c.

LIVOURNE, MARCH 8.

We learn that the little vessels which accompanied Napoleon to the coast of France, had escaped the vigilance of the vessels of war which followed them in the direction of the Arctics and re-entered Porto Ferrajo on the 6th.