SHIPPING INTELLIGENCE.

PORT.

Wednesday, September 9.—The schooner *Waterwitch*, 99 tons, Captain David Tucker, from Launceston, having left on the 16th instant. Cargo—323 bags flour, 611 bags potatoes, 302 bags oats, 6 half pipes Cape wine, 1 cask turpentine, 3 cases hats, 20 bags barley, 3000 boards palings, 98 bags bran.

Thursday, September 11.—The South Australian Company's schooner *Victoria*, 28 tons, Hutchinson, master, from Kangaroo Island, with 35 tons of stone for the New Port Road, 131 bundles iron hoops, and 2 tons rope.

*** A vessel outside the bar yesterday, name unknown; and a small cutter signalled in the Gulf at sun-down last evening.

SAILED.

Tuesday, September 15.—The barque *Lady Emma*, 135 tons, Captain Buckland, for Launceston, in ballast. Passenger—Mrs Buckland.

Same day.—The barque *Mona*, 188 tons, Captain Mitchinson, with 2 cabs tallow, 51 hides, and 7 bales wool, the produce of South Australia; 115 barrels pork, 14 casks merchandize, 12 cases wine, 9 hhds rum, 6 hhds brandy, and 20 cases pickles. Passengers.—Mr and Mrs George Allan, Miss Allan, Miss Schultz, and one in the steerage.

Same Day.—The schooner *John Pirie*, 105 tons, Capt. Hart, for Kangaroo Island, in ballast.

Wednesday, September 16.—The cutter *Lively*, 32 tons, Taylor, master, for Encounter Bay and Launceston, with sundries. Passenger.—Messrs Charles Penn, Joseph Mercey, F. Mitchell, and Robert Keyley.

Friday, September 18.—The schooner *Minerva*, 89 tons, Captain David Reed, for Launceston, with 11 bales South Australian wool, 895 bags sugar, 20 barrels pork, 8 cases merchandize, and 11 cases cigars.

Same Day.—The Government cutter *Waterwitch*, 50 tons, with Surveyors' stores, and Mr Pullen's family.

The *Lotta Booth* unmoored yesterday afternoon, and went down the river. She will start for Encounter Bay to take in her oil for London, by this morning's land breeze, if favorable.

The *Caleb Angas* went down the river to the North Channel, where she will water.

The *Louisa* also went down the river last night, having cleared out for Sydney, with the following passengers:—Mr Gapper, Mr and Mrs G. M. Stephen and servant, Mrs Poole, and six in the steerage.

The *Waterwitch* carries a splendid new whale boat on deck, expressly for Lake Alexandrina and the Murray. She belongs to Mr Pullen's party, who have gone down to buoy off the entrance of the south mouth of the Murray.

The *Castle Forbes* steamer is in a good state of forwardness.

The *Trident* has hauled off the New Wharf, and is ready for a start to Kangaroo Island.

The *Legonda* came into the river on Sunday morning. She moored in the upper harbour on Tuesday morning, and has commenced discharging.

The *William Nicholl* has cleared out for Java.

The cutter *St. Vincent* started yesterday for Port St. Vincent, with Messrs Rankine and Hughes, and Mr Kennedy.

The *Catalpa* and *Dispatch*, hence on the 7th August, arrived at Port Phillip, the former on the 13th, the latter on the 14th inst.

The schooner *Tregenza*, hence, arrived at Hobart Town on the 27th August.

The brig *Rapid* sailed from Launceston for Port Phillip and Port Adelaide on the 3rd September. Passengers: Messrs Dawson, Dunlop, Garrie, Firbridge, Kent, Mills, and Chamberlain.

The schooner *John*, of Sydney, Captain Wooton, sailed from Hobart Town on the 22nd August, and was wrecked two days afterwards on Cape Tribulation; all hands perished.

The French ship of war *L'Indienne*, of 50 guns, Captain Lavaud, had arrived at the Bay of Islands. She reports that several vessels were in her wake with emigrants, to colonize a French settlement in New Zealand.

H.M.S. *Herald* was under sailing orders on the 8th August at Sydney, to proceed to China to join the fleet now assembled there.

The *Lord Eldon* arrived at Sydney on the 8th August from Samarang, with 6000 bags rice, &c.

The *Mercury* arrived at Sydney on the 22nd August from St. Antonio, Valparaiso, and Tahiti, with 60,000 bags of wheat, 7 horses, and 2000 cocoa-nuts.

The *Stockton* arrived the same day from Norfolk Island with 13,000 bushels of maize.

The *Lady Clark* from London, *King William* from Dublin, *Margaret* from Dublin, *Hebrus* from London, *Thames* from London, and *Cheerful* and *Delphin* from New Zealand, arrived at Sydney between the 13th and 23rd August.

The brig *William*, Captain Thom, lately made the run from Launceston to Sydney in three days.

WEEKLY REPORT OF VESSELS IN THE HARBOUR.

CALEB ANGAS (barque), 303 tons, Poole, master—at the North Channel, watering. Angas, Cooke, & Co., agents.

COURIER (schooner), 120 tons, Roach, master—fitting up as a steamer. W. S. Whittington & Co., agents.

JEAN HENRI (barque), 230 tons, Micheville, master—discharging from Bourbon. John Morphett, agent.

LALLA ROOKH (barque), 500 tons, Kinsey, master—at Snapper Point in Encounter Bay. John Morphett, agent.

LOUISA (brig), 164 tons, Taverner, master—about to sail for Sydney. Garratt & Fisher, agents.

LYSANDER (ship), 375 tons, Currie, master—discharging cargo from London. Jas. Frew & Co., agents.

TRUELOVE (schooner), 134 tons, Colter, master—about to sail for Kangaroo Island.

VICTORIA (schooner), 28 tons, Hutchinson, master—discharging stores at the Company's New Wharf.

WATERWITCH (schooner), 99 tons, Talbert, master—discharging cargo from Launceston. C. Beck and Co., agents.

WILLIAM MITCHELL (barque), 109 tons, Harvey, master—cleared out for Java. John Smoker, agent.

BIRTH.—At North Adelaide on the 13th instant, the wife of Mr A. Belsham, of a daughter.

September the 11th, the lady of J. Richardson, Esq., of a son.

MARRIED.—On Tuesday, Sept. 15th, at Trinity Church, by the Rev. C. B. Howard, Stuart Lavery Pullein, Esq., of Port Adelaide, to Miss Mary Ann Hammond, eldest daughter of James Harding, late of the Royal Navy.

DIED.—On the 15th instant, at Margaret Hill, Prospect Village, William, youngest son of William Thomson, Esq., late of Glasgow.

TO CORRESPONDENTS.

We cannot know what "Quamquam" would be at, unless he send us the particulars of what he refers to.

The South Australian Register.

ADELAIDE: SATURDAY, SEPTEMBER 19, 1840.

SUMMARY EXECUTION OF THE NATIVES.

The Instructions of the Governor to the Commissioner of Police, authorising that functionary to put to death summarily, and without judicial trial, not more than three natives of a tribe implicated in the murder of the persons shipwrecked in the *Maria*: His Excellency's Minute on the subject, read in Council on Tuesday last; and the Advocate General's defence of the proceeding, will be found *verbatim* in another part of our journal. Notes of the evidence on which the natives were executed, have, we observe, been laid before the Council, but remain as yet unpublished.

It is to be regretted that any portion of the *facts* should be withheld—although perhaps they are not now essential to the consideration of the matter in its more important bearings, seeing that the testimony, at best, which satisfied the Commissioner of Police and his party of the guilt of the natives, was confessedly illegal, and of a nature inadmissible in a Court of Justice. According to the Governor's *Minute* in Council, "*there remained no legal evidence of any kind, direct or corroborative*" and according to the Advocate General, "though conclusive in a moral point of view, the evidence was not of a nature which was capable of trial by jury, or which could have led to a conviction." The *facts* of the case, therefore, whatever they are, cannot affect the question, and are consequently worthless, save in so far as they may afford a certain amount of moral justification to the parties directly concerned in the execution. In its strictly legal aspect the case stands thus:—Two natives have been shot and two more have been summarily put to death by hanging, by the Commissioner of Police, acting under instructions of His Excellency the Governor, for a murder alleged to have been committed by one of these natives, and participated in generally by their tribe, without legal trial, legal evidence, or the legal sentence of a Court of Justice. The questions therefore naturally arising from these premises are—

1st. The constitutional position of the aborigines, and their rights as British Subjects.

2nd. The power of the Governor, by his own act, to order the summary execution of native inhabitants under any circumstances, and

3rd. Whether the safety of the Colonists was so endangered, the public emergency or necessity of the particular case so urgent, as to warrant a departure from constitutional law, upon the inviolability of which rests the sole security of life and property throughout the British Dominions.

On the first of these points, we take the Proclamation of the 28th December, 1836, published in our last, to be conclusive. That it was the *intention* of that document to confer upon the natives of South Australia the protection and privileges of British Subjects, the writer of the present remarks can well affirm, seeing that the suggestion originated with himself, and that the language of the Proclamation was his own. Whether it be legally sufficient for the purpose is another question; but that the native population has been formally recognised as British subjects, will not be very safely or successfully denied in the face of the full approval of the measure by the Home Government, and up to the recent occurrence, by its general recognition in all Courts of the Province. To the honor and credit of Lord Glenelg, let us repeat that the first Despatch which he penned on receiving the announcement of the establishment of the Colony on these shores, was a warm and earnest approval of the act of Captain Hindmarsh, admitting the aboriginal inhabitants to the rights of British subjects. The *Minute* of Governor Gawler, read to the Council on Tuesday, contains no direct announcement of His Excellency's opinion on the point; but the remarks of the Advocate General furnish us with that gentleman's view of the matter: "It appears, indeed, that a proclamation was issued by the first Governor of the province, for the protection of the natives. That proclamation, however, as its language imports, had for its object to express the determination of the Government to punish *acts of violence or injustice by the settlers*, and to inculcate 'moderation and forbearance *in their intercourse* with the native inhabitants'." (*Advocate General's Remarks in Council*) The learned Advocate has given the least important portion of the document, and has incautiously stated, as the only objects it desired to effect, those which have no material bearing on the case at issue. The words of the Proclamation are—"It is also, at this time, especially my duty to apprize the colonists of my resolution to take EVERY LAWFUL MEANS for extending the same protection to the Native Population as to the rest of His Majesty's subjects, and of my firm determination to punish with exemplary severity, all acts of violence or injustice which may in any manner be practised or attempted against the Natives, WHO ARE AS MUCH UNDER THE SAFEGUARD OF THE LAW AS THE COLONISTS THEMSELVES, AND EQUALLY ENTITLED TO THE PRIVILEGES OF BRITISH SUBJECTS."

The arguments of the 'Advocate-general, throughout, are sufficiently ingenious. They are the bold efforts of a clever barrister, to put the best gloss on his client's case, made at the same time with an earnestness and sincerity which clearly bespeaks individual faith in the views he has espoused. No ability, and no ingenuity, however, can hide the "spot," or make a good cause out of one radically bad. It is asserted, for instance, that "The peaceable and orderly intercourse which subsists between us and our neighbouring natives, *founded mainly on their own natural disposition*, has justified the extension to them of rights and privileges which they seem to understand and value, and *in the acceptance of which they may be held to have acquiesced*." (*Remarks*). But in making this statement, the Advocate General has overlooked the fact, that the natives, generally and without exception, were declared, by the proclamation, British subjects, *before* it was ascertained what their conduct or intercourse with us would be—and *before* any native tribe was better known to the Government than that of the *Big Murray*. His subsequent assertion therefore, that the proclamation only "*properly applies to peaceable native tribes*," is altogether unsupported by the fact. The Advocate General's position that the *Big Murray* tribe is "on no intelligible ground entitled to the protection of British laws," is met, not merely by the broad circumstance that they are within the bounds of a British territory, but that for their enjoyment of that very protection the name of the Sovereign of England has been formally pledged. The acceptance or rejection of the title and privileges of British subjects may in some measure qualify any view to be taken of the conduct of the natives towards those who have brought themselves into uninvited proximity with their race, and from whom they may dread injury or extirpation; but it can in no degree alter the relations or the conduct of Government towards the natives, so long at least as they are admitted by a most solemn and official act to be "as much under the safeguard of the law as the colonists themselves, and equally entitled to the privileges of British subjects." The natives, protected from the violence and aggression of European settlers, *are* necessarily made subject to the same laws in their own conduct towards the settlers. This principle, indeed, is settled so far as law can settle it. It has been distinctly recognized by the Supreme Court of the province, and acted upon in numerous instances, by the three different judges who have filled the highest judicial seat. The more recent example in which two natives were arraigned before a British Jury, found guilty, condemned by the Judge to death, and suffered that extreme penalty, is surely sufficient to decide this portion of the controversy. It has been said, we observe, in a quarter where facts are usually manufactured for the argument, that in that case "trial by jury was *conceded*." Conceded, forsooth—the trial of a British subject, by a British Jury, in a British province, conceded! What next? For the honor of South Australia, we are bound to declare that this imputation on the constitutional liberty of its inhabitants, is utterly without foundation.

The point next to be considered, is the power of the Governor by his own act to order the summary execution of native inhabitants under any circumstances.

On this question, we find the Advocate General declaring that "Necessity warranted the Executive Government, abandoning ordinary forms, which were inadequate to the emergency, to take upon itself the responsibility of putting forth these more ample powers and prerogatives, with which, for the welfare of the state, and the peace of society, it is constitutionally vested. (*Remarks to Council*)." In His Excellency's minute to the Council, it is stated—"Beyond the limits of ordinary British justice, there remained for me, in conformity with usage in Great Britain, the course of considering the district in question as in a disturbed state, and of proceeding on the principles of martial law. This course I adopted. The proclamation of it, however, was not issued. Had it been made, it would have cast a reflection injurious, undeserved, and most liable to be misunderstood, on the province at large; it would have altogether exceeded the character of the case, and, towards those especially concerned in it, would have been an empty form. This, the proclamation of martial law, was omitted with the unanimous advice and concurrence of the members of the Council; but in other respects the proceeding was regulated on strict principles of martial justice."

We infer from these passages, according to the Advocate General's doctrine, that it is maintained that a power to put human beings to death to be exercised in a case of *necessity*, is *constitutionally* vested in the Executive Government; and, according to His Excellency, that without the formal proclamation of martial law, that power can be exercised by him, in his capacity and by virtue of his office as Governor. Nay, to what extent and of what character His Excellency views his power the concluding paragraph of his minute will best illustrate: "I consider it my duty to have no share in that unhealthy sentiment, by some persons miscalled philanthropy, which, under the apprehension of exercising cruelty, would allow impunity to wanton crimes. Whenever such are committed, whether, as in the present case, by the blacks against the white population, or, as in future cases that may occur within the limits of the province, by Europeans against the aborigines, I will most certainly, as long as I have the honor to be at the head of this Government, use every exertion in my power to bring such wanton offenders to formal and condign punishment."

With great submission to His Excellency, we venture to say that the "miscalled philanthropy," of which he speaks, and which "would allow impunity to wanton crimes," does not exist, or at least has not been expressed, in South Australia. The "unhealthy sentiment" which we at least have very distinctly expressed, is not to claim impunity for atrocities, but to protect the key-stone of British liberty, and to save those who have not been legally proved guilty of crime from being illegally put to death. Of the murder of the unfortunate Europeans, there is but one feeling of sorrow and abhorrence—shaded in the minds of those who can look beyond the surface by the consideration that it has led to events, the consequences of which to South Australia are yet to be bitterly deplored. We have not forgotten the alarm which even the judicial execution of the two natives, created in England among many of the staunchest friends of the province. We cannot anticipate without reasonable dread the effects of a transaction without precedent or example in colonial history, nor observe without grief that it is attempted to be defended by arguments which, if sound, would go far to place the Governor as much above the law as he is under it, and to invest him with an authority repugnant to all civil liberty, and which the British constitution for the last two centuries has denied, under any circumstances, or under any emergency, to the Sovereign. We maintain that no Governor of a British colony, by virtue of prerogative, or under any pretext, possesses the power to order summary trial by an unrecognised tribunal, and the summary execution of a human being, under any circumstances. The constitutional power to do so, says the Advocate General, is vested in the Governor, who can "put forth more ample powers and prerogatives" for that purpose. We must decline to receive this *dictum* of the learned advocate without some authority or example; and, unfortunately, he has given none. The utmost that can be claimed for the Governor, in his executive capacity, is to exercise in South Australia those powers which can legally be exercised by the Sovereign at home, and, we may add, those also of the colonial minister. There is power enough here, but none sufficient for the purpose. The days when the Sovereign could "head and hang" are past; and all the power he personally retains over the lives and liberty of his subjects, are his attributes of pardon and mercy.

There is claimed, we acknowledge, for Governor Gawler no *judicial* power. His Excellency states that though no proclamation of martial law was made, he adopted the *course* "in conformity with usage in Great Britain," of considering the district of the offending natives in "a disturbed state," and "proceeding on the principles of martial law." We grieve to say that the matter is thus placed in no better position. The usage of Great Britain allows the Sovereign to invade no privilege of the subject. It requires the consent of Parliament to declare a district disturbed, and to suspend the *habeas corpus* act. Even then, however, we know of no usage or law which, in the case of rebellion or insurrection within the British dominions, would authorise a military force to hang *prisoners* taken in action or seized in disturbed districts, without trial by the recognised civil authorities. In the rebellions of 1715 and 1745, the Balmerinos and the Lovats were not hanged under martial law, but tried and condemned by their peers; Emmett was executed for his participation in the Irish rebellion; and, within the last year, the survivors of the Newport insurrection were not hanged by the military who made them prisoners, but handed over to the civil authorities. Martial law, indeed, has no legal existence in the dominions of England. The only law which is recognised is a very different thing—the *military law*—embodied and strictly defined in the Annual Mutiny Act. On this point we shall not follow the example of the Advocate General, but quote authorities which we think will satisfy him on the question of martial law: Sir Edward Coke (3 Inst. 52) observes, "that if a lieutenant, or other that hath commission of martial law, doth, in time of peace, hang or otherwise execute a man, by colour of martial law, this is murder, for it is against *Magna Charta*." Sir Matthew Hale declares "martial law to be in reality no law, but something indulged rather than allowed as a law; that the necessity of order and discipline is the only thing which can give it countenance, and, therefore, it ought not to be permitted in the time of peace, when the King's Courts are open for all persons to receive justice according to the laws of the land."—(*Hale's Hist. of the Com. Law, c. 2.*) "And if a court-martial put a man to death in time of peace, the officers are guilty of murder."—(*Hale's Pleas of the Crown, p. 46.*) Lord Loughborough, then Lord Chief Justice of the Common Pleas, and afterwards Lord High Chancellor of England, in the case of Grant—(*Trinity Term Reports, June, 1792*) gave his opinion on the point as follows:—"Martial law," said that most able judge "such as it is described by Hale, and such also as it is marked by Sir William Blackstone, does not exist in England at all. Where martial law is established and prevails in any country, it is of a totally different nature from that which, by inaccuracy, is called martial law, merely because the decision is by a court martial; but which bears no affinity to that which was formerly attempted to be exercised in this kingdom, which was contrary to the constitution, and has been for a century totally exploded. Where martial law prevails, the authority under which it is exercised claims a jurisdiction over all military persons under all circumstances; even their debts are subject to inquiry, by a military authority. Every species of offence, committed by any person who appertains to the army, is tried—not by a civil judicature, but by the judicature of the regiment or corps to which he belongs. It extends also to a great variety of cases, not relating to the discipline of the army, in those states which subsist by military power. Plots against the Sovereign, intelligence to the enemy, and the like, are all considered as cases within the cognizance of the military authority. In the reign of King William there was a conspiracy against his person in Holland, and the persons guilty of that conspiracy were tried by a Council of officers. There was also a conspiracy against his person in England, but the conspirators were tried by the common law. Within a very recent period, the incendiaries, attempting to set fire to the docks at Portsmouth, were tried by the common law. In this country, the delinquencies of soldiers are not triable, as in most countries in Europe, by martial law; but, where they are ordinary offences against the civil peace, they are tried by the common law courts. Therefore it is totally inaccurate to state martial law as having any place whatever, within the realm of Great Britain".

Martial law, it is true, can be declared by the supreme authority of Parliament in England, in cases of rebellion or insurrection, and under the same circumstances only in the colonies, by a legislative act not by the executive authority. This point set at rest, it is merely necessary to refer to His Excellency's minute to establish the fact that martial law, under the powers of which the natives were tried and executed, was *not declared at all*.

But the proceeding, we are told, was in other respects, "regulated on strict principles of martial justice." Now, unfortunately, on this important point, it is impossible for us to arrive at such a conclusion. The absence of a jury and the military profession of the judges, is the chief distinction of a military court. The rules of evidence by which military courts are governed differ in no shape from those which regulate the civil courts. In both no testimony but on oath can be received—none that can be rejected by a court of law is admissible by a court martial. On this point there is also conclusive authority.

"Every court," said Sergeant Marshall in the case of Grant, "which assumes the name of a court of justice, must have some principles or rules for its guidance in the investigation of truth. The rules of evidence of the common law, at least so far as they are applicable to criminal proceedings, are neither numerous nor complex, but plain and simple, and are founded in wisdom, and established by the experience of ages. The rules of evidence are, perhaps, those of all others which ought to be kept inviolate with the most religious veneration. The whole administration of justice, both civil and criminal, in a great measure depends on them. A military court-martial is the mere creature of the Mutiny Act, and has not the smallest shadow of authority but what it derives from that act; it is impossible that it can have any ancient or immemorial rules of evidence peculiar to itself. Now, it may be laid down, as a clear and indisputable principle of law, that wherever an act of Parliament erects a new judicature, without prescribing any particular rules of evidence to it, the common law will supply its own rules, from which it will not suffer such new erected court to depart. This would hold in matters merely civil, and surely much more strongly in questions of a criminal nature. This is not mere theory, but the law of the land; and the general practice of courts-martial is conformable to it. This appears by every treatise that has been published on the subject of either naval or military courts-martial."—(*Adye on Courts-martial, 174; Sullivan's Thoughts on Martial Law, 45–55; Military Arrangements, 121; M'Arthur's Treatise on Naval Courts-martial, 107–112; and Frye's Case in the appendix of that work, No. 13, p. 62.*

Supposing, then, that it had been within the powers of the Governor in his Executive capacity and wielding the prerogative of the Sovereign legally to authorise the Court Martial on the natives, which it was not; or that, formed by the Commissioner of Police in his civil capacity, and composed exclusively of individuals having no military status, it was legally constituted, which it was not—then the insuperable objection—the nature and character of the evidence inadmissible alike in any court, civil or military—remains untouched. The natives have been condemned and executed, *not* merely by an unauthorised, illegal, and unconstitutional tribunal, but upon evidence, which in a court either civil or military would not be sufficient to hang a dog. It is impossible to read Major O'Halloran's Reports of the proceedings without being painfully sensible of this fact. Vague assumptions and loose conjectures there are in abundance—some suspicious circumstances, which might have been possibly explained, and which by no means furnished positive proof that murders had been committed by the natives, far less that the individuals punished for them were guilty—the hearsay assertions of another tribe in avowed and inveterate hostility to that implicated, and, with the cunning of the savage, probably glad to get an enemy slain at the small expence of a falsehood or of a trumped up and exaggerated story. Beyond this there is nothing. The inherent vice of the whole case indeed, in whatever light it is viewed, is the total want of every thing in the shape of credible evidence upon which any civil or military proceeding could be safely founded, or any human life could be taken away.

The point now remaining to be considered, is whether the safety of the colonists was endangered by the natives of the Big Murray tribe—whether the necessity or emergency of this particular case was such as to warrant measures confessedly extra-judicial and unconstitutional.

It is supposed that Captain Barker was murdered about ten years ago by this tribe; that a sealer named Roach fell into their hands about two years ago, and was also butchered; and that within the last two months a portion of the crew of the *Maria*, seventeen in number, were also murdered by the same tribe. We use the term *supposed*, not because we entertain any moral doubt of these facts, but because they are admitted on all hands not to be susceptible of legal proof. The Advocate General indeed solves the difficulty by a bold cut. The crime of the wretched Big Murray natives is to be regarded "not as that of individual British subjects, but of a whole hostile tribe—that is, of a nation at enmity with Her Majesty's subjects;" and Vattel is quoted from liberally to justify the retributive foray of the Commissioner of Police. We shall not attempt to lessen the effect of the authorities produced, all of which are exceedingly sound in themselves, with this defect, however, that so far as we can see, they have but little applicability to the case at issue.

Had the Advocate General examined the Governor's commission, he would have found that his Excellency was debarred from making peace, or levying war; and that whatever rank in the scale of states the *Big Murray* "nation" might possess, South Australia was only a colony—a mere pendicle of a greater country, with no other power, in a political sense, than that of defending itself from hostile aggression. To justify, therefore, a war by South Australia against *Mibenara*, it is necessary to show not only that the citizens of the former state have been slain by the latter, but that the safety of South Australia was endangered by that nation. Take the facts:—A vessel containing, as far as we can ascertain, no colonist of South Australia, but, on the contrary, persons who had left the colony, and who, of course, if they had ever been, had ceased to be colonists of South Australia, is unfortunately driven ashore on the coast of the "nation" in question, and a certain number of its crew and passengers are there killed. A sad event, indeed; but, of itself, altogether insufficient to justify a *national* war, or to render the maxims of Monsieur de Vattel applicable. If we treat the Murray tribe as a nation, we must concede to them the right to make their own laws, and what is more, we must deny the right of the South Australian *nation* to object to those laws, whatever they may be. It is clearly irreconcileable to grant the Advocate General's position, and allow them *stated* as a nation, and at the same time to adopt the Governor's view, and treat them merely as inhabitants of a disturbed district of the province subject to the martial law of another country for crimes committed within their own. The Chinese punish with death barbarians, and particularly barbarian women found at large in the Celestial Empire; but no one would say that, because the crew of a shipwrecked vessel had been slaughtered by the Chinese the English nation were entitled to hang any number of the Chinese, "not exceeding three" who might have been suspected—not proved, to be guilty of the crime—much less to declare war against it, or to bombard Canton or burn Pekin, as the huts of the Milmenuras were burnt by the South Australian Police? The condition, in short, to justify an act of aggression or retribution on *the part of the State*, is clearly awanting. *There was no attack on the South Australian Colonists by the tribe in question.*

We may now draw our observations to a close. It is unnecessary to disclaim any wish on our part to do more than to assert for the native population that immunity from punishment without legal proof of guilt, which British subjects everywhere enjoy, and to protest, as loudly and emphatically as we can, against the exercise and to deny the existence in any colonial Governor of a power unrecognised by the laws of the empire, in direct violation of the British constitution, and of the rights, privileges, and liberties of Her Majesty's subjects.

THE NATIVES OF LYNDOCH VALLEY

We have been informed by two gentlemen of respectability, who have come in from Lyndoch Valley within the last two days, that the letter which appeared in yesterday's *Southern Australian* regarding an apparently hostile visit of a body of natives to the above district is all a parcel of stuff. As the letter treats the matter as a somewhat serious occurrence, and is likely to be looked on as such by persons who have not the means of ascertaining the simple truth, it may be well to state the facts of the case as given us by the gentlemen mentioned who were eye-witnesses. The letter states, that the natives first assembled to the number of 270, and afterwards their numbers were augmented to 500. This, certainly, would be rather a formidable army for six men to stand up against. According to our informants, however, and unfortunately for "Veritas," who evidently wishes to leave an impression that he had been engaged in something very serious, the actual numbers of the party were not more than fifty persons. The assemblage was, indeed, according to our informant, nothing more than a party of the natives on one of those periodical excursions which are common to all the native tribes; and there was nothing whatever like hostility in their behaviour. We are also told that there is no truth whatever in the statements, that Mr Tooth and Mr Beamo were struck by the natives. The whole affair it appears arose from the timidness of the surveyor, who has not been long in the neighbourhood, and had never before seen the natives on their hunting excursions; but the circumstance was never thought of as anything uncommon by the parties resident in the neighbourhood. How long will the *Southern Australian* allow itself to be hoaxed? It would indeed matter nothing how much nonsense he put forth were it not that the editor almost invariably manages to discover something or another which is calculated injuriously to affect the colony without cause.

THE ENTRANCE TO THE MURRAY.

The following report from the Resident Commissioner to the Colonization Commissioners, is taken from the Thursday's *Gazette*:—

15th September, 1840.

GENTLEMEN.—I have the great satisfaction of reporting to you the discovery of a navigable channel at the sea mouth of the River Murray. The difficulties hitherto attendant on the solution of this question have been the almost continual setting in of a sea too heavy to be encountered by undecked boats, and the doubt, with apparent strong cause, whether there were depth of water, within the breakers sufficient to admit vessels of larger burthen.

Having had two or three days of very favorable opportunity for observing the outside of the mouth from the high sand hills on the eastern side I ascertained what I conceived to be the course of a channel of deep water in which the rollers broke with much less force than on either side of it. On mentioning the circumstances to Mr Pullen (the Colonial Marine Surveyor), who had been some time employed in that portion of the province, I found that his observations agreed with mine, and that he was desirous to attempt to sound it. The weather being very moderate on the morning of the 6th September, I allowed him to proceed in a whale boat with five other volunteers from his boat's crew, and am happy to say that in ten minutes from the time of leaving the point of the western sand spit at the river's mouth, they had passed up the channel, crossed the bar at the head of it, and had rounded to in smooth water thoroughly on the outside of all the shoals and breakers. After waiting there a short time, they returned into the river by the same channel without any approach to serious danger.

The soundings in the channel were from two to two and a-half fathoms. On the bar at its outer extremity, in going out, having run too close to the western shoal, they decreased to seven feet, in returning, ten feet were carried clear over it. The water was at half tide; from two to three feet more in actual depth, are certainly attainable at high water.

In the river, inside of the above mentioned channel, is a perfectly secure holding ground, and depth of at least ten or twelve feet. From this point, across Lake Alexandrina and up the Murray to the Great Bend in latitude 34° at least and probably much further, there is a clear navigation for vessels of four feet draught of water; this small draught also applying, not to the general course, but to the passage of one or two shoals which may be deepened by artificial means.

The names of the brave men who in conjunction with Mr Pullen volunteered the attempt, and

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