

**REVIEW OF THE OPINION OF
JUDGE COWEN, OF THE
SUPREME COURT OF THE STATE
OF NEW-YORK, IN THE CASE OF
ALEXANDER MCLEOD**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649297986

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JUDGE TALLMADGE

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REVIEW OF THE OPINION

OF

JUDGE COWEN,

OF

THE SUPREME COURT OF THE STATE OF NEW-YORK,

IN

THE CASE OF ALEXANDER McLEOD.

BY

JUDGE TALLMADGE,

OF

THE SUPERIOR COURT OF THE CITY OF NEW-YORK.

NEW-YORK:

PUBLISHED BY N. T. ELDREDGE.

1841.

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ERRATA.

- Page 8, line 10—read discharge *or* bail, for discharge *on* bail.
" " " 15—read judgment *or* decree, for judgment *on* decree.
" 15, " 9—read 12 *East*, 225, for 15 *East*, 225.

E. A. CLAYTON, PRINTER,
No. 9 *Thames-street*.

TO

THE HON. DANIEL WEBSTER,

SECRETARY OF STATE OF THE UNITED STATES,

The following Review of the Opinion of Judge COWEN, of the Supreme Court of the State of New-York, in the case of *Alexander McLeod*, is respectfully inscribed, by

A CITIZEN OF NEW-YORK.

PUBLISHER'S PREFACE.

The following Review was originally published under the anonymous designation of "A Citizen of New-York."—The principles of law there laid down, and the distinguished ability with which they were maintained, excited the attention and called forth the unqualified approbation of the most eminent Statesmen and Jurists in the country. A new edition being required, the author has made the necessary corrections, furnished some additional authorities, and given permission to prefix his name. We are also allowed to add the letters of CHANCELLOR KENT and CHIEF JUSTICE SPENCER, each affirming and sustaining to the fullest extent, every position taken by the Reviewer. The authority which the names of those distinguished jurists carry with them, and the well reasoned matter of the Review, cannot fail to satisfy every unprejudiced mind, that the Supreme Court of the State of New-York egregiously erred in declaring the principles of national law in the case of *Alexander McLeod*.

To *McLeod*, individually, the decision of the Supreme Court is no longer of any importance. But so far as it may operate as a precedent, or be cited as authority, hereafter, in cases involving questions of peace or war with foreign powers, it is of vital importance. *McLeod* having been acquitted, there was no opportunity to review the decision of the Supreme Court before a higher tribunal. If there had been, we have no doubt such tribunal would have come to the same conclusions to which the Reviewer has arrived. And we venture to predict that, whenever such questions shall again arise, this Review will be referred to, as containing the true principles on which the decision of them must rest.

COMMENDATORY LETTERS FROM CHANCELLOR KENT AND CHIEF
JUSTICE SPENCER.

NEW-YORK, November 6th, 1841.

DEAR SIR,

I thank you for your Review of the opinion of Judge COWEN in the case of *McLeod*.

It is very ably executed. It is clear, precise, neat, accurate, and entirely conclusive upon every point. I have read it with great satisfaction, and I should have been proud if I had been the author of it.

Yours, very respectfully,

JAMES KENT.

HON. DANIEL B. TALLMADGE.

LONDON, November 12th, 1841.

MY DEAR SIR,

Your letter, accompanied by a Review of Mr. Justice COWEN's opinion in the *McLeod case*, from the pen of Judge TALLMADGE, has been received, and I thank you for them. I have read the Review with great satisfaction, and consider it a masterly and unanswerable production. It refutes and overthrows the opinion most amply. The authorities upon all the points, except on that of the proceedings on *habeas corpus*, are full and perfect. It probably did not occur to Judge TALLMADGE to examine our Statute of *Habeas Corpus*, 2 R. S. 563. The revised act refers to the laws of 1818, which contain an enactment drawn by me. Prior to this Statute it was matter of great doubt whether a Judge at Chambers, or even the Court itself, could, after the return made, examine into the