drigo, and we suppose have joined marshal Ney, who threatens that fortress, which will now be the object of serious contention. To both parties its possession is of the utmost importance.——To the French, as it would favour their designs upon Oporto and the North of Portugal, and force the allied army southward; and to the Allies, as it is an interesting point between the enemy's division in Leon and Estremadura. Ciudad Rodrigo is, however a place of considerable strength, with a formidable garrison, and though the French have brought their heavy artillery from Salamanca for the purpose of commencing the siege, it is not likely, were it even left to itself, soon to surrender.—— But the movements of the armies indicate an approaching battle: Lord Wellington, aware of the design upon Ciudad Rodrigo, had dispatched General Crauford to cover it; and as it appears from advices from Oporto, as late as the 10th of May, the French approached his advanced guard and drove in the piquets. This movement has drawn Lord Wellington from Vizen, who, with 22,000 British and 14,000 Portuguese, took the direction of Almeida, and on the 5th inst. was advanced about three leagues south east of Almeida. The French army is commanded by Ney, and with the force under Junot, which has probably joined him, and is said to amount to 30,000 men. Other divisions are, however, joined him, and the probability of a battle will be determined by the respective proportion of force. If the two armies approach near in point of numbers, we apprehend that the French will prove shy of fighting. They will probably linger until they are joined by powertul reinforcements, and add to their chances of success by the superiority of their numbers.

The small bands of the patriots are on the alert in the different provinces with various success.—Romana has repulsed an attack upon Badajoz, and O'Donnel shows that he only wants a more powerful and efficient force to do real service to his country.

Summary of Events.—The exchange of prisoners between this country and France has already commenced on an extensive scale. Four cartels sailed from Plymouth on Tuesday the 15th, for Morlaix, with near 800 French prisoners on board, many of whom had been several years confined in this country. These will be followed by many others, as fast as the cartels return with our prisoners in exchange.

A German paper states, under date from Semlin, the 18th ult. that the campaign between the Turks and Russians had been opened by some skirmishing, and that the army of each power was estimated at one hundred and fifty thousand men.

The disturbance in the Tyrol, mentioned in one of our late numbers, had their origin in the attempt to enforce the Conscription system among those brave people.

The reduction of the Danish island of Bornholm in the Baltic, it is understood, was the first object of the fleet under Sir. J. Saumarez, and from the state of its defences, it is supposed by this time to have fallen an easy conquest.

The report of the non-intercourse act having been suspended, is contradicted in the N. York letters of the 31st of March, which likewise state, that no further progress had been made in Mr. Macon's bill, nor was any other commercial or political measures of importance likely to be adopted until the return of the John Adams frigate.

RALEIGH, JULY 12, 1810.

On Friday last came on to be argued before the Supreme Court, in this city, the exceptions taken by the Counsel of John Owen to the Indictment upon which he was tried and found guilty of murdering Patrick Conway, of this city, at the last Superior Court of this county. In addition to Messrs. Seawell and Cameron, Mr. P. Brown, of Halifax, appeared as Counsel for the Prisoner; the Attorney-General and Judge Potter, as on the trial, appeared in behalf of the State. The Counsel for the Prisoner waved the exception originally taken to the Indictment relative to the description of the wound, to take up another which they alledged would prove fatal to the bill, as an indictment for *murder*. To constitute murder, the killing must be done feloniously & with malice aforethought. This, the Counsel for the Prisoner insisted, did not appear from the Indictment. They allowed that the assault was properly laid to be made feloniously and with malice aforethought, as was the subsequent striking and beating; but they insisted that that part of the indictment which alledges the murder, in the following words, "giving to the said Patrick Conway, then & there, with the pine-stick aforesaid, in and upon the head and face of him the said Patrick Conway, several mortal wounds, of which said several mortal wounds the aforesaid Patrick Conway then and there instantly died" was not stated to be done by the same beating and striking, which was laid as feloniously and maliciously done, and that the Indictment could not therefore be sustained against the Prisoner for *murder*, though good for *man-slaughter*. The JUDGES, after taking time for deliberation, decided, it was understood, against this exception, though no opinion was yet delivered. And on Monday, the original exception respecting the size of the wound or wounds laid in the Indictment to have been mortal, was taken up and argued at considerable length by Mr. Seawell for the Prisoner and Judge Potter for the State, no other of the former Counsel appearing on this question. On Tuesday morning, at the meeting of the Court, Judge Taylor, delivered at length, the opinion of the Court, with the authorities upon which it was founded, on the exception first argued, which was that the exception could not be maintained. He added that this was the unanimous opinion of the Court. Respecting the exception taken to the Indictment on the ground that the dimensions of the wounds were not stated, Judge Taylor observed that the Court was divided in sentiment, and each member would therefore deliver his own opinion.

Judge HENDERSON observed, that if the Court was now about to decide on the propriety of requiring the dimensions of any wound charged in an Indictment to be mortal, he should be clearly of opinion that it was unnecessary; but as immemorial custom and all the authorities, have determined, though not for reasons satisfactory to his mind, that wherever a death is stated to be occasioned by a wound, the length, breadth and depth of the wound must be described, where they are capable of description; and as the word wounds is used in this Indictment, the dimensions of those wounds ought to have been stated. The Judge observed, that a Precedent had been produced from West, which did not seem to make this necessary; but, he said, this was not authority; it was a mere precedent upon which no judegment had passed, and the omission might have been made by mistake. On examining all the books, he could find no authority where a death is charged in an Indictment to be produced by a wound where the dimensions of the wound are omitted. It is not for the Court to determine why this description is required; it is enough for them to know that it is the law and believing that it is so, from precedent and authority, he thought it his duty so to pronounce it.

Judge LOWRIE had little doubt that if this Indictment was submitted to the opinion of men, unlearned in the law, it would be their unanimous opinion that the description of the manner in which the deceased came to his death was sufficient. But if the law has said otherwise, though the Court may not see the reason upon which this law is founded, they must be bound by it. It appears from the books, that wounds capable of description, must be described, in order that Courts may judge whether it is probable that death might have been produced by them. It appears probable that in this case, Conway might have come to his death by the strokes stated to have been given; but the dimensions of the wounds being required, they cannot be dispensed with. The authorities to this end stand uncontradicted, except by West, in his Precedents, which, for the reasons stated by his Brother Henderson, ought not to set aside the others. All the exceptions to this rule are cases where the wound cannot be described, such as where a limb is cut off, or the body run through. In his opinion the Indictment is not good.

Judge HALL supposed it was unnecessary for him to add any thing to what had been stated by his Brethren Henderson and Lowrie. It might be necessary to enquire what the Common Law of England was when it was adopted by this country, for such as it was, it must be observed. It had been very properly observed, that if the Court was now met for determining in what manner Indictments of this kind should be formed, this strictness would not be required. Any one proposing that wounds should be described as laid down in the books, would be considered as evincing but little knowledge of legislation. The reason given by writers for observing this particularly is, that the Court may see that the wound is such as might produce death. The causes of death appeared to be laid with sufficient certainty in this Indictment; but as we find from all our authorities, from Coke down to East, that wherever death is stated to be produced by a wound, the dimensions of the wound must be given, it cannot now be dispensed with. It appears from West, that the law was not formerly so; but this was the law when the common law of England was introduced here. All modern writers agree that the dimensions of the wound must be stated. Not for a good reason, he allowed; but it was not for the Court to legislate, but to decide, as they had worn to do, according to the law. The exceptions stated in the books prove the rule. When bruises or blows are stated, no dimensions are necessary; but where a wound is laid, it has been an invariable custom to state its dimensions.

Judge TAYLOR was very sorry that it was not in his power to concur in the opinions which had been delivered by his brethren.—He however, could place put little confidence in his own opinion, since it was different to day from what it was yesterday. He then thought the Indictment could not be sustained: but upon a more careful examination of authorities, he now thought otherwise. He had looked into West's Book of Precedents; and though, as has been stated, precedents only shew the opinions of the writers, yet all precedents which are brought into argument are of the same authority--their weight depends much upon the age in which they were written, and the character of the writers.—Such as they are, they had induced him to change his opinion. Taking up West's book, he first read the Indictment which had been produced by the Prisoner's Counsel. Looking further into the book, he found a precedent where a person is charged with striking with a club; he is stated to have struck, wounded and mal-treated the deceased, who languished and died, but there is no description of the wound. He found another precedent, where a person is charged with striking, wounding and mal-treating, without describing the wound. From these precedents, it appeared that the writer did not consider it necessary when a wound was inflicted with a club or stick, that it should be particularly described. These precedents, the Judge observed, led him to look into the English Common Law, by which his opinion was confirmed, as fully as it could be here.

The Judge said he had read what East says on the subject, where he states, that in all cases of doubt, a statement which shews that death might ensue is sufficient, and had asked himself, whether the wound given to Conway is so described in the Indictment, as probably to occasion death? —The answer was in the affirmative.

This Indictment, the Judge observed, is in the same words with the precedents in West, except as to the word "mal-treated." which is found in the latter, and which is of no consequence.

Finally, the Judge observed, he came to this conclusion, that wherever the death is occasioned by a cut with a sword, dagger, or other edged intrument, it is necessary to state the dimensions of the wound; but when the death is occasioned by a club, cudgel or stick, it is sufficient to state the wound without the dimensions. He was therefore of opinion that the indictment is good.

Judge LOCKE agreed entirely with the opinion delivered by Judge Taylor, for the same reason, and from the authorities quoted by him, and which he deemed it unnecessary to repeat.

The Indictment upon which Owen was tried being adjudged insufficient, he was committed to answer the same charge upon another bill of Indictment to be preferred against him, at the Superior Court for this County, in October next.

The Supreme Court adjourned on Tuesday evening.

FOREIGN NEWS.

BRITISH HOUSE OF COMMONS, May 7.

AMERICAN DISPUTE.

Mr. Whitbread rose, and said, that having read and considered certain papers laid before the house, respecting the negociation which was carried on between Mr. Erskine and the American government, he was now perfectly prepared to state his opinion upon them. The Right Hon. gentleman, his majesty's late Secretary for foreign affairs (Mr. Canning) had publicly charged Mr. Erskine with having departed widely from both the letter and spirit of his instructions. Mr Erskine denied the fact; and the question at issue in the face of Europe was, whether or not the right hon. gentleman had deviated from the truth. He for his own part was persuaded no such imputation could not be founded against the right honorable gentleman. But—

[Here the Chancellor of the Exchequer rose and deprecated the progress of the hon. gentleman in a speech which might lead to an irregular debate, there being no question before the house.]

Mr. Whitbread threw himself upon the indulgence of the house, and hoped to be permitted to say a few remaining words. He did not bring forward any motion on this subject: he wished to save the house the trouble of a discussion. If he wished to be indulged in saying a few words on the subject, the right hon. gentleman might also wish for a similar indulgence. The question was at issue as between the right hon. gentleman, Mr. Erskine, and himself. What he wished to say, then, was, that all that was wanting to the vindication of Mr. Erskine, was the publication of that letter now before the world;—and from an attentive perusal of that letter, he thought the vindication complete; that Mr. Erskine had complied with the spirit of his instructions; but that those instructions were not drawn up with the accuracy they ought to have been, nor with due attention to a law which had been recently passed in America. Understanding however, that an intercourse was now in negotiation with America, to which he hoped a favorable issue; he did not wish to urge any thing further on the subject, nor to bring on the question which he had meant to have done; if that negociation had commenced.

Mr. Canning expressed surprize at the course pursued by the honourable gentleman, and thought he had a right to complain of his want of candour in thus deserting a discussion, which for so long a time he had appeared anxions to bring forward. For his own part, he had always courted it, as the only way in which he could shew to the world, that what he had done in his official character with respect to Mr. Erskine would bear the strictest and most minute investigation; and that he only acted in that business as the duty he owed to his majesty, who had placed him in the office he then held, and to his own character, had absolutely compelled him to do. When the honourable gentleman thought it necessary to move for certain papers on the subject, he not only abstained from objecting to those papers, but actually moved for many others which the honourable, gentleman did not know of, in order to throw every possible light on the subject in all its bearings. There was nothing for which he was more anxious than that the investigation of this subject should be entered into in the fullest manner. He appealed to the house for the truth of his assertion, that he had never said any thing tending to traduce the character of Mr. Erskine. He had affirmed, and re-affirmed, that Mr. Erskine had acted contrary to his instructions, not only as to the letter, but the spirit of them and he was ready to make it appear in argument, whenever the honourable gentleman, or any other of Mr. Erskine's friends, should choose to bring it forward. He thought the honourable gentleman did not treat him fairly, when, after he had stated that if certain documents were brought forward, it would appear that his (Mr. Canning's) conduct would be found faulty and reprehensible; and now those very documents were brought forward, the honourable gentleman deserted his former ground, and he was left without an apportunity of defending his official character from the charges which had at different times been made against it. In the official situation in which he was placed, he thought it his duty to advise his majesty to recall Mr. Erskine for having disobeyed his instructions; and he should have done the same under similar circumstances to any other person, even the nearest and dearest friend he had in the world, even tho' he had been appointed by himself. Mr. Erskine was an entire stranger to him; and when he found him acting in such a manner, he could not in duty but prevent a recurrence of a conduct which might produce circumstances of the most unpleasant and dangerous tendency. For the reasons he had repeatedly given, it was impossible he could have any view to personal hostility to Mr. Erskine. All he had done was in the line of his duty, and to justify himself with respect to the conduct that Mr. Erskine's deviation from his instructions compelled him to adopt.

Mr. Whitbread said, he did not expect the hon. gentleman would attribute to him firmness or candor. All he had to say was, that, as the matter stood, he did not think it necessary to proceed any further in it. If the right hon. gentlemen thought proper to take up the matter, and make a question of it, he should be ready to meet him on it.

Mr. Morris hoped the house would indulge him with a few observations on this subject, which so nearly concerned this hon. relative—He must express his surprize that the right hon. gentleman should treat this question as a personal difference.

Mr. Canning (to order) said he must again state to the hon. gentleman—

The speaker rose, and said he thought it now his duty to interfere; and he hoped that what had occurred this day would prevent in future any discussion being permitted to take place where there was no question before the house.

Here the discussion closed.
