

**A REVIEW OF THE AUTHORITIES
AS TO THE REPRESSION OF RIOT
OR REBELLION: WITH SPECIAL
REFERENCE TO CRIMINAL OR
CIVIL LIABILITY**

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A Review of the Authorities as to the Repression of Riot or Rebellion: With Special Reference to Criminal or Civil Liability by W. F. Finlason

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W. F. FINLASON

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CROWN AND NISI PRIUS CASES, IN ALL THE COURTS,

For the Ten Years from 1856 to 1866 : With Notes to the more important Cases, elucidating the Law, and collecting the Authorities on the subjects to which they relate. Edited, and chiefly reported by W. F. FINLASON, Esq., of the Middle Temple, Barrister-at-Law. In Four Volumes. Royal 8vo. Price £12 4s. 6d. calf.

"A valuable addition to our reports."—*Journal*, July 8rd, 1868.

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As allowed by the Law of England in time of Rebellion : With Illustrations Drawn from the Official Documents in the Jamaica Case ; and Comments, Constitutional and Legal (with reference to civil and criminal responsibility for acts done in execution of Martial Law). By W. F. FINLASON, Esq., of the Middle Temple. In 8vo. 1868. Price 12s. cloth.

"The publication of Mr. FINLASON'S treatise—simultaneously with the Report of the Royal Commission—is extremely opportune. Singular though it may seem, the subject of martial law has never, until now, been treated of by any of our legal writers. And as a natural consequence, the ignorance manifested when it became important to determine its nature, and the rules by which it is governed, was almost universal. * * * It is not too much to say, that much of this misconception would have been avoided if such a treatise on martial law had been extant as that which was before us. Those who are acquainted with Mr. FINLASON'S writings are well aware of the exhaustive process to which he submits every subject which he handles, and will not be surprised to learn that he has broached no opinions which he is not in a position to support by a host of authorities. As a useful commentary, Mr. FINLASON'S book merits a place in the library of every educated man. For the legal profession it supplies a want which has long been felt."—*Morning Post*, July 30, 1868.

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"The author has swept every corner in his research for authorities in any way bearing on his theme ; and in this work will be found all that can be known on the subject of martial law."—*Law Journal*, September 6th, 1867.

"It is well that any doubts which hang around martial law should be the subject of temperate enquiry. * * * The author maintains that martial law, on occasions of special emergency, is part of our constitutional system. * * * Yet the agitation of the question proves the necessity for determining the character of martial law, the authority which it confers, and the restraints and regulations by which its exercise ought to be limited. The author considers that the instructions lately sent to the Governors of Colonies from the Colonial Office are sufficient to answer this purpose."—*Morning Post*, October 16th, 1867.

"There is no saying how things may grow ; and no system of civilized jurisprudence would be complete if it did not recognize such a power as Mr. FINLASON clearly establishes in the British Crown. We heartily recommend his book to every lawyer ; and, indeed, to every student of constitutional history."—*Morning Herald*, September 19th, 1867.

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Criminal or Civil Liability.

By ^{Wilson} W. F. FINLASON, Esq.,

BARRISTER-AT-LAW.

EDITOR OF "CROWN AND NISI PRIUS REPORTS,"
AUTHOR OF "COMMON LAW PROCEDURE;" "COMMENTARIES ON
MARTIAL LAW," ETC.

"Whatever is done honestly for these objects will be held justified by law."—*Lord Chief Justice Tindal*—*Cited in "Summons on Court Martial," p. 54.*

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AND
CHAPMAN & HALL, PICCADILLY.

1868.

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PREFACE.

THE Jamaica case has caused great attention to be given to the subject of martial law, which is only a part of the law relating to the repression of riot, insurrection, or rebellion—martial law relating to the most serious case, that of *rebellion*, for which, as Hawkins says, in his *Pleas of the Crown*, “no remedies can be too sharp or severe.” And the charge of Mr. Justice Blackburn treated the question of criminal liability, whether for neglect or excess, with reference to the declaration or execution of martial law, in cases of rebellion, as a portion of the *general* subject, and governed by the same general principles. The occasion, therefore, appeared opportune for the publication of a Review of the Authorities on the subject, to accompany the publication of the charge of the learned judge.

The publication has thus a general and permanent, as well as a special temporary interest. It has general reference to the question of criminal liability, either of magistrates or other civil or military officers, either for excess or neglect in their measures for the suppression of riot or rebellion, and it has a particular reference to the subject of martial law, either in this country or the colonies. As to the latter part of the subject it contains some authorities, historical or legal, which will be found to possess a novel and peculiar interest, such as the case

of *Lundy* (p. 55), where the Judges of England held that a man could be sent into a part of the country where martial law existed (by reason of rebellion) to be tried there by martial law for an offence committed there, and the last instances of an execution by martial law in England (p. 65), and martial law in Ireland (p. 93). The Demerara case, in which the legality of martial law was upheld by Tindal and Copley (p. 155). The Ceylon case, comprising an unpublished despatch of Earl Grey, with which the author has been favoured by the noble earl (pp. 96, 138), and the opinion of the present Lord Chief Justice, then Attorney-General, in support of martial law (pp. 135, 157), and a solemn decision of the Supreme Court of the United States in support of the same view (p. 144). The Jamaica case will be found also fully stated (p. 159), with the comments on the charge of the Lord Chief Justice (p. 175), and the substance of the charge of Mr. Justice Blackburn (p. 208).

It is believed the present publication comprises everything there is to be found on the subject.

TRINIDAD, July 18, 1866.

CONTENTS.

	PAGE
RESPONSIBILITY OF MAGISTRATES FOR RECOURSE TO MILITARY FORCE UNDER ORDINARY LAW	1-48
THE LORD GEORGE GORDON RIOTS	8-16
THE MANCHESTER MASSACRE	18-24
THE BRISTOL RIOTS	40
SCOPE OF MARTIAL LAW, AND INSTANCES OF ITS EXERCISE IN THIS COUNTRY	49-72
NATURE AND PRINCIPLES OF MARTIAL LAW	73-88
MARTIAL LAW IN IRELAND	88-153
NECESSITY FOR BILLS OF INDEMNITY	89-97
LEGAL LIABILITY OF GOVERNORS, &c.	103
COMMON LAW IN THE COLONIES	117
POWERS OF COLONIAL GOVERNORS	121-129
THE CEYLON CASE	135-157
DESPATCH OF EARL GREY FERRODON	140
AMERICAN AUTHORITIES	143-144
THE DEMERARA CASE	156
THE JAMAICA CASE	160
THE REPORT OF THE COMMISSIONERS	161
THE CHARGE OF THE LORD CHIEF JUSTICE	173
THE CHARGE OF MR. JUSTICE BLACKBURN	209

Just Published,

A REPORT of the Case of the QUEEN v. EYRE in the Queen's Bench, containing the Charge of MR. JUSTICE BLACKBURN, with the evidence at length.

REVIEW
OF
THE AUTHORITIES,

44, 45, 46.

A CENTURY has elapsed since a person in the position of a magistrate, or any high functionary of Government, was prosecuted on a criminal charge for his acts in endeavouring to repress riot or insurrection, and the results of that prosecution—though it failed—were most mischievous and most instructive. There can be little doubt that it tended to produce the feeling of hesitation and insecurity among magistrates, which produced such fatal results a few years later in London, and, in our time, at Bristol, Birmingham, and other places; and, moreover, the cases on this subject have an indirect bearing upon the present subject—of martial law. For the law upon the subject—that is, as to the right to employ the military in aid of the civil power in the suppression of riot or actual insurrection—is clear and plain, though, as it takes place under ordinary law, it is liable to be entangled with strict legal difficulties; and it is obvious that it assumes and requires the presence of such an adequate military power (aided by an overwhelming moral power on the side of loyalty), that its action, merely in aid of the civil power, will be sufficient. And martial law is only the development and extension and application of the *principles* of the common law. Take a case