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LORD ERSKINE's SPEECH.

The following Speech on the ſubject of the Orders in Council, is intereſting from the view which it takes of the flagrant injuſtice of theſe orders, and of the conſequences that muſt inevitably enſue, if the miſtaken policy at preſent purſued by the Britiſh miniſtry is perſiſted in. We recommend it to the peruſal of our readers.

Lord Erſkine roſe, and in a moſt eloquent and brilliant ſpeech of upwards of two hours, of which we regret being unable to give more than a faint outline, took a luminous view of the law of nations, which, he contended was violated by the Orders in Council. The queſtion his Lordſhip obſerved, which the Houſe had now to decide, was one of the greateſt importance that could occupy the attention of the Legiſlature, it was no leſs than whether placed in that proud pre-eminence on which we had hitherto ſtood, we ſhould continue that courſe of conduct towards other nations, marked by juſtice, honor and good faith, which had hitherto characteriſed this nation; or whether we ſhould now deſcend from that exalted ſituation and declare to the world, that the injuſtice of France ſhould become a general injuſtice, and that all thoſe moral ſanctions which had hitherto ſupported laws from whence the nations of the world had derived ſecurity and happineſs, ſhould be at once abrogated and annulled? Let him not be told upon ſuch a queſtion, of the order in council of the 7th of January and that that was a juſtification of theſe orders; let him not be told of what the preceding adminiſtration had done, let not any ſuch argument be advanced. This was not a queſtion between two adminiſtrations—a queſtion between adminiſtration and the public, between them and the nations of the world, all of whom anxiouſly looked to the deciſions of that houſe and of Parliament upon this momentous ſubject.—Two of the reſolutions he intended to propoſe went to the point, that the power of legiſlation was veſted excluſively in the king, by and with the advice of Parliament; but that the king had no right in council, to alter or ſuſpend any law, except in caſe of certain emergency, and then that parliament ought forthwith to be called together to conſider of ſuch emergency. How was it in this caſe?—Parliament, inſtead of being called together, were further prorogued.

At the time theſe orders in council were iſſued, the aſſiſtance of Parliament might have been immediately had; Parliament was at the threſhold and ready to enter their chambers, but miniſters choſe to ſend them back and to legiſlate without them; and now after all this, they came to Parliament to give effect to the orders which they choſe to iſſue without the authority of Parliament when they might have had that authority.—He would ſooner throw the patent, by which he came there as a peer of the realm, into the fire, than conſent to ſanction the exerciſe of ſuch a power in the Crown as had been adviſed by Miniſters, who when they had done this act, had now come to Parliament to eke out the meaſure, and to add legiſlative enactments to what had been done without regard to the authority of Parliament. This act had alſo been done in violation of the law of nations, which was a part of the law of the land, under which neutrals had hitherto traded to our ports in ſecurity. Their trade, and the property embarked in it, having been protected by the law of the land.—The law of nations conſiſted of thoſe proviſions which had been agreed upon by nations for mutual ſecurity and protection, which had been in many inſtances confirmed by treaties. A diſtinction had been attempted to be taken on a former evening, between the law of nations and the uſages of nations: he apprehended, however, that the former grew in a great degree out of the latter.

This law had been found mutually beneficial, had been mutually ſanctioned & clearly defined, and had, according to the opinions and deciſions of eminent lawyers, become a part of the law of the land.—He did not mean to contend, that the law of nations did not give to a belligerent the right of retaliating upon another belligerent; but in what way? Inſtead of the complex ſenſe which had been given to the word retaliation, let its real meaning be looked to, as deduced from its derivation; it would then be found that it meant the doing a like act to the enemy which he did to us. An inference had been drawn from this interpretation on a former evening, that we were therefore to act preciſely in the ſame manner as the enemy; and that if he violated a neutral territory in order to make a more convenient attack, that we were to follow him, ſtep by ſtep; no ſuch thing. If A. ſtruck him he had a right to ſtrike A. not for the ſake of ſtriking, but in order to prevent him from continuing the attack; but was it becauſe he was ſtruck by A. that, therefore, he was to ſtrike B? So we had a right to retaliate the violence or the injuſtice of France, but we had no right to make an attack upon the innocent and unoffending neutral. If a neutral voluntarily acquieſced in, and agreed to carry into effect an act of hoſtility by one belligerent againſt another, then ſhe became a party in the war. If alſo a neutral was ſo weak that ſhe muſt ſubmit to the evils of one belligerent, and the belligerent actually proceeded to carry into effect his hoſtile deſigns by means of the weakneſs of the neutral, then an act of retaliation by the other belligerent muſt involve the neutral. He would not however fatigue their lordſhips by citing ſuppoſed caſes, but would go at once to the caſe of America: it was clearly proved that America had not acquieſced in the Berlin decree, but had remonſtrated againſt it; and was it to be believed, that at the diſtance of upwards of three thouſand miles America was to be compelled by France, with ſcarcely any navy, to aſſiſt in carrying the French decrees into execution? But what could juſtify the act of retaliation? Nothing but the execution of the obnoxious decree, it muſt be executed to juſtify retaliation. It was nothing that the French emperor choſe to iſſue a boaſting decree, he had not the means of carrying it into effect, he had not veſſels to execute it. We, it ſeemed had determined to ſupply veſſels and to capture, our own goods upon the ocean. The French emperor could not deſtroy the trade of neutrals, for want of veſſels, but we were to put the finiſhing hand to it.

America, with a tonnage amounting to half our own, carried on a trade to every quarter of the globe, took 10,000,000l. of our exports, and carried them, and would have continued to carry them, to the ports of the enemy in ſpite of the decree; but our orders in council muſt put an end to this trade, and reduce America to diſtreſs for want of the means of diſpoſing of her produce. When a meaſure, in ſome degree ſimilar, was reſorted to by the French government in the year 1795, a right hon. Gentleman then, in adminiſtration, laughed at it, and thought it abſurd to take any other notice of it. Had this policy been now adopted, our trade might have gone on flouriſhing, as it did ſubſequent to and in ſpite of the French decree, which might have been poſted on the piazzas and poſts of Paris, but which would have remained a dead letter, and been laughed at by the world. How was it now? France had ſaid that American veſſels coming from the ports of this country ſhould be confiſcated, and we had declared that if they did not firſt come to our ports they ſhould be liable to capture.—Thus we had rendered it impoſſible for the Americans to carry on any trade; we had driven their commerce from their ports, and from the ſyſtem adopted by the miniſters, it ſeemed as if we ſhould ſoon try the effects of theory ſupported in a pamphlet lately publiſhed, that Britain could flouriſh independent of commerce. The ſyſtem of Miniſters in theſe regulations forcibly reminded him of a circumſtance which a ſhort time ſince occured in Ireland. He did not mean any national reflection, for he highly reſpected the generous and brave character of the natives of that part of the United Kingdom, but although diſplaying much genious, they were ſometimes deficient in preciſion.

A banker in that country, who was also a magiſtrate, having offended a number of perſons by his puniſhing one of them who had been concerned in a riot, they unanimouſly agreed to retaliate upon him, and after ſome conſideration it was also agreed, that the moſt effectual mode of doing this would be to burn as many of the notes iſſued from his bank as they could collect, by which meaſure of retaliation the banker was a gainer of between 30 and 40,000l. He hoped their lordſhips would not ſanction a ſyſtem of retaliation ſimilar in its principle to this Iriſh meaſure, which, it ſhould be recollected was adopted by thoſe who had derived little advantage from education, and who had but little knowledge of the world. Their lordſhips on the contrary, were ſtatesmen, legiſlators, and men of the world. The noble lord contended, that one nation had no right to alter the law of nations; applying this to the orders in council, which did alter the law of nations, and quoting opinions of Sir William Scott, Sir Dudley Ryan, lord Mansfield, and Mr. Murry, then attorney-general, and other high legal authorities, to prove this point; & alſo what was conſidered the law of the land with reſpect to the law of nations. His lordſhip alſo quoted the work of the earl of Liverpool, reſpecting the maritime confederacy, where the ſame argument was urged. He hoped that that noble earl would not live to ſee the place from whence he had taken his title, and which had riſen by commerce from a fiſhing village. This argument was, beſides, deducible both from policy, and the reaſon of the thing. What became of the arguments againſt the maritime confederacy, if it were to be allowed that one power had a right to alter the law of nations? Thoſe arguments were founded upon a principle expreſsly the contrary. The maritime rights of Britain had become, by long uſage, incorporated with the law of nations; it was therefore contended, and juſtly contended that no power had a right to make a new law contrary to theſe rights. Thoſe powers who entered into the maritime confederacy, were forced (for thoſe who were in the wrong were generally obliged to ſupport themſelves by the ſame kind of arguments) to ſet aſide Puffendorff, Grotius, Vatel, and the other writers on the law of nations, and ſet up arguments of their own, wholly contradictory to theſe eſtabliſhed principles; and in the ſame manner he heard that in another place, Puffendorff, Grotius, Vattel, and other writers, had been ſet aſide in argument for the purpoſe of introducing a new law of nations. *To attempt to introduce ſuch a new law would be in effect introducing a principle which would tend to barbariſe the world.* The deciſions of our courts of admiralty had been invariably found on the principle, that one power could not alter the law of nations, without the conſent of the whole. Thoſe deciſions had been looked to by all Europe, as being ſtrictly conformable to the law of nations, and had been deſcribed by an eminent writer, as the moſt worthy to be regarded, becauſe they could not be influenced by the order of the ſovereign, or the caprice of a miniſter. Now the great principles upon which theſe deciſions were founded were to be wholly ſubverted, a new law of nations was to be introduced by this country, and made ſubſervient to our own convenience. This new law was to be found in theſe orders in council, which ſtated in their preamble as the reaſon for iſſuing them, that there had been an increaſed rigor in the execution of the French decree. In order to ſupport this aſſertion it ſhould have been proved—firſt, that there was a rigor; and then, that that rigor was increaſed; this aſſertion in the preamble could alone authoriſe the execution of thoſe orders in courts of admiralty, contrary to the eſtabliſhed law of nations; and yet the documents laid before the houſe by miniſters, wholly failed in proving this very aſſertion, which muſt form the ground of carrying the orders into effect. But then it was ſaid that all this was done under the authority of the king's war prerogative. The law of nations was only operative in time of war, and it were an abſurdity in reaſoning and a contradiction in principle, to ſay that it could be abolished by the king's war prerogative; that that which only exiſted in force in time of war, could be ſtifled in its birth, could be, in its very origin, abrogated by an oppoſing prerogotive, which alſo derived his exiſtence from the ſame ſource. His lordſhip quoted ſtatutes of the reign of Edward III. and Richard II. to prove that by the diſtinction there made between the property of Denizens, foreigners, and enemies, that the principles of the law of nations, as exiſting in time of war, were even then clearly underſtood, and ſeemed, in his opinion, to negative the counter operation of any ſuch prerogative. In latter times alſo ſuch a prerogative had not been exerciſed.—In 1609, upon an emergency, queen Anne called her parliament together, it not ſeeming to be conceived at that time that ſhe could exerciſe any ſuch prerogative. He could not conceive that it exiſted now in the manner preſcribed in ſupport of thoſe orders. If, however, theſe orders were thought ſo neceſſary to miniſters, why did they not communicate them in due ſeaſon to America? Inſtead of this Mr. Monroe was ſuffered to ſail, and Mr. Roſe was ſent there without being informed of the intention of iſſuing them. A pacific miſſion was ſent, and in the mean time our ſhips were ſent out to capture American veſſels, or to force them into our ports. Why was this reſorted to? This was no ſecret expedition; there was no neceſſity for concealing information of an expedition directed againſt ſhips not rigged.

We had forced America to reſort to an embargo in her own defence; to keep her veſſels in her own harbors, to prevent their being captured; and thus to cauſe the greateſt diſtreſs for want of that trade which had been to them and to us ſo greatly beneficial. He contended that every power had a right to make laws with reſpect to the entrance of veſſels into its own harbors; and in that point of view, the proviſion in the order in council with reſpect to certificates was in his opinion unjuſt. Another material point was the warning. It had been ſaid on a former night, that objection-able as this was not intended to compel American veſſels to come into our ports, but that they might, if they pleaſed, return to their own ports. Was this to be conſidered ſatisfactory to the Americans? They come upon a trading voyage, and they are told you cannot go where you propoſed, without firſt coming into a Britiſh port, but you may, if you pleaſe, return home. If, when he practiſed in the court of