A. D. Murphey

THE RALEIGH MINERVA.

[THREE DOLLARS PER YEAR.] RALEIGH, N. C.—PUBLISHED (WEEKLY) BY LUCAS AND A. H. BOYLAN. $2 50 CENTS IN ADVANCE.

VOL. 17. FRIDAY, JUNE 26, 1812. No. 847.

Congress of the United States.

From the National Intelligencer of June 16.

HOUSE OF REPRESENTATIVES.

Friday, May 29.

Mr. RANDOLPH said that rumors to which he could not shut his ears [of an intended declaration of war on Monday next, with closed doors] and the circumstance which had just passed under the eye of the House [alluding to a motion to adjourn] impelled him to make a last effort to rescue the country from the calamities which, he feared, were impending over it. He had a proposition to submit, the decision of which would affect vitally the best interests of the nation. He conceived himself bound to bring it forward. He did not feel himself a free agent in the transaction. He would endeavor to state as succinctly as he could the grounds of his motion, and he humbly asked the attention of every man whose mind was at all open to conviction—of every man devoted to the cause of this country, not only in that House but in every rank and condition of life, throughout the state.

The motion which he was about to offer grew out of certain propositions, which he pledged himself to prove; nay, without an abuse of the term, to *demonstrate.*

The first of these propositions was that the Berlin and Milan decrees were not only *not repealed*, but that our government had furnished to the house and to the world unequivocal evidence of the fact. The difficulty in demonstrating this proposition arose rather from his embarrassment in selecting from the vast mass of evidence before him, than in any deficiency of proof; for if he were to use all the testimony that might be adduced, he feared his discourse would grow to a bulk not inferior to the volume which he held in his hand. He would refer the House to the correspondence, generally, of Mr. Russell, our agent at Paris, accompanying the Presidents message of the present session. He referred to the schedule of American vessels taken by French privateers since the first of November 1810, [the period of the alledged repeal of the French decrees of Berlin and Milan]: of these, it was worthy of remark, that "the Robinsonova, from Norfolk to London, with tobacco, cotton and staves; the Mary-Ann, from Charleston to London, with cotton and rice; the General Eaton, from London to Charleston, in ballast; the Neptune, from London to Charleston, also in ballast; the Clio, from London to Philadelphia, with English manufactures; the Zebra, from Boston to Taragona, (*then in possession of the Spaniards*) with staves; all coming under the operation of the French decrees, and *seized since the 2d November.* 1810, had *not* been restored on the 4th of July last;" and that the only two vessels named in that schedule, which had been restored; viz. the Two-Brothers, from Boston to St. Malo, and the Star, from Salem to Naples (the one a port in France, the other virtually a French port) did *not* come within the scope of the Berlin and Milan decrees. Indeed, the only cases relied upon by Mr. Monroe to prove the repeal of the French decrees, are those of the Grace Ann Green, and the New-Orleans Packet. On the first of these no great stress is laid—because, being captured by a British cruizer, she was retaken by her own crew and carried into Marseilles, where consequently the captors became French prisoners of war. As well might it be expected, that in case of war between the U. States and England, our privateers carrying their prizes into French ports, should be proceeded against under those decrees. It was therefore, on the case of the New-Orleans Packet that the principal reliance was placed, to shew the repeal of the obnoxious decrees. But even this case established, beyond the possibility of doubt, that the Milan decrees of the 23d November, and 17th December, 1807, were in force subsequently to the period of their alledged repeal. This vessel hearing at Gibraltar, where she had disposed of a part of her cargo, of the letter of the Duke of Cadore of the 5th of August, 1810, suspended her sales, and the supercargo after having consulted with Mr. Hackley, the American consul at Cadiz, determined, on the faith of that insiduous letter, to proceed with the remainder of his cargo to Bordeaux. He took the precaution, however, to delay his voyage, so that he might not arrive in France before the 1st of November, the day on which the Berlin and Milan decrees were to cease to operate.

[Here Mr. Randolph was called to order by Mr. Wright, who said there was no motion before the House. The Speaker overruled Mr. Wright's objection, as the gentleman from Virginia had declared his intention to make a motion, and it had been usual to permit prefatory remarks.]

Mr. Randolph said he would proceed in his argument without deviating to the right or to the left, and he would endeavor to suppress every feeling which the question was so well calculated to excite. "The vessel accordingly arrived in the Garonne on the 14th of November, but did not reach Bordeaux until the 3d of December. On the 5th of this month the *director of the customs* seized the New-Orleans Packet and her cargo, under the Milan decrees of the 23d November and 17th December, 1807, *expressly set forth*, for having come from an English port, and having been visited by a British vessel of war." Thus this vessel having voluntarily entered a French port on the faith of the repeal of the decrees, was seized under them. "These facts," continues Mr. Russell, "having been stated to me by the supercargo, or the American vice-consul at Bordeaux, and the principal one, that of the *seizure under the Milan* decrees, being established by the *proces verbal*, put into my hands by one of the consignees of the cargo, I conceived it to be my duty not to suffer the transaction to pass unnoticed." This *proces verbal* is neither more nor less than the *libel* in the Admiralty Court, by the law officer of the French government, agreeably to the law of the Empire. What should we say to a libel of a vessel by the District Attorney of the United States, or her seizure by the Custom House officers, under an act of Congress which had been repealed? The whole of this correspondence proves unequivocally that neither the Custom House Officers, the Courts of Law, nor the French cruizers, not even the *public* ships of war had ever received notice from their government of the repeal of the Berlin and Milan decrees. This last fact is further substantiated by the remonstrance of Mr. Barlow to the Duke of Bassano of the 12th of March, 1812, in the case of the "vessels *captured* and *burnt* by his Imperial and Royal Majesty's ships Medusa and Nymph." It should be recollected that all the decrees of the French Emperor are given strictly in charge to certain public functionaries, who are directed to put them in force. The only authorities to whom the repeal of these decrees was to be a rule of action—the cruizers, courts and officers of the customs remained profoundly ignorant of the fact. It is to be found no where but in the proclamation of the President of the United States, of the 2d November, 1810. "To have waited for the receipt of this proclamation (says Mr. Russell) in order to make use of it for the liberation of the New-Orleans Packet, appeared to me a preposterous and unworthy course of proceeding; and to be nothing better than absurdly and *basely* employing the declaration of the President, that the Berlin and Milan decrees had been revoked, as the means of obtaining their revocation." They were then not revoked, or surely our minister would not stand in need of *any means for obtaining their revocation.* Proofs multiply on proofs.

"The Custom House Officers of Bordeaux commenced unlading the New-Orleans Packet on the 10th December and completed that work on the 20th, as appears by their *proces verbal* of those dates. That of the 20th expressly declares that the property was to be pursued before the Imperial Council of Prizes" [the Court of Admiralty] "at Paris, according to the decrees of the 23d November, and 17th December, 1806, or in other words *under the decrees of Milan.*" Mr. Russell's remonstrance was submitted to the council of *commerce*, and further proceedings against the New Orleans Packet suspended "*The papers were not transmitted to the council of prizes*, nor a prosecution instituted before that tribunal; which proves only that the prosecution at law was suspended, not that the laws were repealed—" and the vessel and cargo on the 9th of January were placed at the disposition of the consignees, on giving *bond* to pay the estimated amount, should it definitively be decided that a confiscation should take place." Recollect that this vessel voluntarily entered a French port on the faith of the repeal of those decrees. She is seized and libelled under them, but after great exertion on the part of the American minister, he obtains from the French government—what? Proofs of the bona fide revocation of the decrees? Nothing like it. A discharge of the vessel not at all—the bond represents her; she stands pledged in her full value in case she should be found to come within the scope of the law; and yet we must believe the law to be repealed! What sort of a release is this? Mr. Russell makes a merit of having "rescued this property from the seizure with which it has been visited"—that is *rescued it from a court of justice*; and of "having placed it in a situation more favorable than that of *many other vessels and cargoes* which continued in a kind of mortemain, by the suspension of all proceedings in regard to them." And this letter and case is adduced as proof of the repeal of the Berlin and Milan decrees, on the 1st of Nov. 1810.

It is true that in a postscript dated the 5th of July (a month subsequent to the date of the letter to which it is appended, and seven months after his remonstrance to the French government) Mr. Russell states that orders had been given to cancel the bond in question. But surely this is no proof of the revocation of the decrees. Let us see what he says on the 15th of that month. "Although I was fully impressed with the importance of an early decision in favor of the captured vessels, none of which had been included in the list above mentioned"—["of 16 American vessels whose cargoes had been admitted by order of the Emperor"—probably under licence] yet I deemed it proper to wait for a few days, before I made an application on the subject. On the 11th however, having learnt at the council of prizes that no new order had been received there"—(that on the 11th of July 1811, the French admiralty court had no notice of the repeal of the decrees) "I judged it to be my duty no longer to remain silent. I therefore on that day addressed to the Duke of Bassano my note with a list of American vessels captured since the first of November. On the 15th I learnt that he had laid this note with a general report before the Emperor, but that his majesty declined taking any decision with regard to it, before it had been submitted to a council of commerce.

The house would take into consideration the distinction between the council of *prizes*, and admiralty court bound to decide according to the laws of the empire, and the council of commerce, which was of the nature of a board of trade; charged with the general superintendence of the concerns of commerce; occupied in *devising* regulations, not expounding them; an institution altogether political, by no means judicial. His majesty then determined to consult his council of commerce, whether from motives of policy he should or should not grant a special exemption from the operation of his laws. In the same letter learning from the Duke of Bassano "that the case of the brig Good Intent, must be carried before the Council of Prizes," Mr. Russell wishes to secure this case from this "*inauspicious mode of proceeding*;" that is, from the operation of the law. Why? if the law, so dreaded, was repealed?

"I had from time to time (he continues) informed myself of the proceedings, in regard to the captured vessels, and ascertained the fact that the duke of Bassano had made a report in relation to them. The Emperor, it appears, however, still wished for the decision of his "Council of Commerce." What? to know if his decrees of Berlin and Milan were revoked? Was his majesty ignorant of the fact? Can stronger evidence be adduced that they were in force; or can the release (not by the courts of law, but by special executive interference) under *peculiar circumstances*, and after a long detention for violating those decrees, of *a single vessel*, establish the fact of their repeal. On the contrary ought not the solitary exception (granting it to be one) to fortify the general rule.

In passing, it was well worthy of remark, that the French minister, being interrogated by Mr. Russell on the subject of our future commercial intercourse with France, "replied that no such communication would be made at Paris, but that Mr. Serrurier would be fully instructed on this head." The House would recollect how much had been expected from Mr. Serrurier on his arrival and how much had been obtained. An Ex-Secretary of State even had the temerity to charge the President with having compelled him to desist from putting any interrogatories to the French minister on his arrival. But be that as it may, one thing is certain, that application having been made to the minister of the requisition of the Senate during the present session, he had declared an entire ignorance of every thing relating to the subject.

To dissipate the last shadow of doubt on the question of the repeal of the French decrees, Mr. Serrurier, in his letter of July 23. 1811, to the Secretary of State, expressly declares, that "the *new dispositions* of our government, expressed in the supplementary act of the *2d March last*, having been officially communicated to his court, his imperial majesty, as soon as he was made acquainted with them, directed that the American vessels sequestered in the ports of France *since the 2d of November*, should be released; orders were at the same time to be given to *admit American vessels*, laden with American produce!"

Under these circumstances, whatever difference of opinion might exist as the propriety of the President's proclamation in the first instance, there could be none as to its revocation. As soon as it was ascertained, not only from the proceedings of her cruizers on the high seas, but of her courts of law, and of her government, that France had acted, *mala fide*, towards this country, it surely became the duty of the President to recal that proclamation. He could have no doubt of his constitutional power over the subject, having already exercised it in a case not dissimilar—[Erskine's arrangement.] That proclamation was the dividing line of our policy; the root of our present evil. From that fatal proclamation we are to date our departure from that neutral position to which we had so long and so tenaciously adhered and the accomplishment of the designs of France upon us. In issuing it, the President had yield to the deceitful overtures of France; and it was worthy of observation how different a construction had thereby been put upon the act of non intercourse (as it was commonly called) from that of May, 1810—altho' the words of the two acts were the same. In the first case, a modification of the decrees and orders of the belligerents, so as that they should cease to violate our neutral rights, was alone required. In the second, other matter was blended with them, although the words of the two acts were identically the same. This grew out of the insidious letter of the duke of Cadore, the terms of which were accepted, with the conditions annexed, by the President of the United States. These conditions presented two alternatives:" That England should revoke her orders in council and abolish those principles of blockade which France alledged to be new, or that the U. States should cause their flag to be respected by the English"—in other words should become parties to the war on the side of France. In order to know what these principles were, the renunciation of which we were to require at the instigation of France, it would be necessary to attend to the language of the French decrees. By these it would not be denied that principles, heretofore unheard of, were attempted to be, "*interpolated into the laws of nations*"—Principles diametrically adverse to those which the government of the U. States had repeatedly recognised, in their correspondence with foreign powers as well as in their public treaties, to be legitimate and incontestible. The French doctrine of blockade being the only branch of the subject embraced in the duke of Cadore's letter of the 5th Aug. 1810, would alone be noticed. These required that the right of blockade should be restricted to fortified ports, invested by sea and by land. That it should not extend to the mouths of rivers, harbors or places not fortified."

Under such definition the blockade of May, 1806, otherwise called Mr. Fox's blockade, stood condemned—but Mr. Randolph had no hesitation in affirming that blockade to have been legal, agreeably to the long established principles of national law, sanctioned by the U. States. In Mr. Foster's letter of the 3d of July last to Mr. Monroe, he says—"the blockade of May 1806 was notified by Mr. Secretary Fox on this principle ["that no blockade can be justifiable or valid unless it be supported by an adequate force destined to maintain it and to expose to hazard all vessels attempting to evade its operation"] nor was that blockade announced until he had satisfied himself by a communication with the board of Admiralty, that the Admiralty possessed the means, & would employ them, of watching the whole coast from Brest to Elbe and of effectually enforcing the blockade.

"The blockade of May, 1806, according to the doctrine maintained by Great Britain, was just and lawful in its origin because it was supported both in intention and fact by an adequate naval force," In a subsequent part of the same letter it is distinctly averred that "that blockade was maintained by a sufficient naval force;" and the doctrine of *paper blockade* is every were expressly disclaimed in the correspondence, here as well as at London. "If (says Mr. Foster) the orders in council should be abrogated, the *blockade of May*, 1806, *could not continue under our construction of the law of nations, unless that blockade could be maintained by a due application of an adequate naval force.*" The same admission will be found in Marquis Wellesley's correspondence with Mr. Pinkney.

The coast of France from Brest to Calais is what seamen call an iron-bound coast. It has been blockaded in every war during the last century, that short period of the American war excepted, when England loast the mastery of the channel. No British minister would be suffered to hold his place who should fail strictly to watch the opposite coast of France. Brest, her principal naval arsenal, protruded out into the Atlantic ocean, confessed the want of suitable harbors for ships of war in the channel: while from Plymouth, Portsmouth & the mouth of the Thames, the opposite coast is easily watched and overawed. From Calais to the Elbe the coast is low, flat and shelving, difficult of access, affording few good inlets, indeed none except the Scheldt. The blockade of this coast is as easy as that of Carolina. But it must not pass unnoticed that the blockade was in point of fact, (as appears from Mr. Monroe's letters to Mr. Madison of the 17th and 20th of May, 1806,) limited to the small extent of the coast between Havre and Ostend; neutrals being permitted to trade, freely, eastward of Ostend, and westward of the mouth of the Seine "except in articles contraband of war and enemies property which are seizable without blockade" And Mr. Monroe, in announcing this very blockade of May 16, 1806, to his own government, speaks of it as a measure highly satisfactory to the commercial interests. And yet the removal of this blockade against which Mr. Monroe did not remonstrate, of which there was no mention in the subsequent in the way of that arrangement, of which no notice was taken in our proposition to England for a mutual abandonment of our embargo and her orders in council is *now* by French device and contrivance to be made a *sine qua non*, an indispensable preliminary to all accommodation with Great Britain.

Mr. R. had heard with sincere satisfaction many respectable gentlemen in the House and out of it express a wish, that, by a revocation of the orders in council, the British ministry would put it in the power of our government to come to some adjustment of our differences with England. The position which he was about to lay down, and the proof of which the course of his argument had compelled him in some degree to anticipate, however it might startle persons of this description, was nevertheless susceptible of the most direct and positive evidence. Little did those gentlemen dream, but such was the indisputable fact, that the orders in council had not stood in the way of accommodation, and that their removal at this moment would not satisfy our administration. In Lord Wellesley's letter to Mr. Pinkney of Dec. 29, 1810, he says—"If nothing more had been required of G. Britain, for the purpose of securing the continuation of the repeal of the French decrees, than the repeal of our orders in Council, I should not have hesitated to declare the perfect readiness of this government to fulfil that condition. On these terms the British government has always been seriously disposed to repeal the orders in council. It appears however, not only by the letter of the French minister, but by your explanation, that the repeal of the orders in council will not satisfy either the French or the American governments. The British government is further required by the letter of the French minister to renounce those principles of blockade which the French government alleges to be new."

This fact is placed beyond a doubt, by Mr. Pinkney's answer of the 14th January, 1811. "If I comprehend the other parts of your lordship's letter," says he, "they declare in effect that the British Government *will repeal nothing but the orders in council*"—and again, "It is certainly true that the American government has required, as indispensable in the view of its acts of intercourse and non-intercourse, the annulment of the British blockade of May 1806."

Thus, when the British government stood pledged to repeal its orders in council, a question entirely distinct has been dexterously mingled with it in our discussions with England; the renunciation of the right of blockade in the face of Mr. Madison's construction of the non intercourse law, and of Mr. Smith's instructions to General Armstrong of July 5, and 2d November, 1810, has been declared indispensable in the view of that act, and there is the fullest admission that *more* than the repeal of the orders in council was required; viz. of that,

(*Concluded on the fourth page.*)