



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 characterized 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 sudden emergency; and 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 take 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 and 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 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 to 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 single amounting to half our own, carried on a trade to every quarter of the globe, took 10,000,000 of our exports, and carried them, and would have continued to have carried 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. Gen. Leiman, then in Administration, laughed at it, & 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 the theory supported in a pamphlet lately published, that Britain could flourish independent of commerce. The system of Ministers in the regulations forcibly remind-

ed him of a circumstance which a short time since occurred 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 genius, 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 50 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, & quoting opinions of Sir William Scott, Sir Dudley Ryan, Lord Mansfield, and Mr. Murray, then attorney-general, and other high legal authorities, to prove this point; and 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 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, & 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? These arguments were founded on a principle expressly the contrary. The maritime rights of Britain had become, by long usage, incorporated with the law of nations; and 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 are in the wrong were generally obliged to support themselves by the same kind of arguments) to set aside Puffendorf, Grotius, Vattel, 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 had heard that in another place, Puffendorf, 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 to set at naught a principle which would tend to barbarise the world. The decisions of our courts of admiralty had been invariably founded 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 the 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 rigour in the execution of the French decree. In order to support this assertion it should have been proved first, that there was a rigour; and then, that that rigour was increased; his assertion remained wholly un-

proved; and yet its assertion in the preamble could alone authorise the execution of those orders in courts of admiralty; without it, the orders could not have been construed 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 stilled in its birth, could be in its very origin, abrogated by an opposing prerogative, which also derived its 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 later times also such a prerogative had not been exercised. In 1709, 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 these orders. If, however, these orders were thought so necessary to ministers, who did they not communicate them in due season to America? Instead of this Mr. Monroe was suffered to sail, & Mr. Rose was sent there without being informed of the intention of stopping them. A pacific mission was sent, and in the mean time our ships were sent out to capture American ships, 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 harbours; and in this point of view, the provision in the orders in Council with respect to certificates was, in his opinion, unjust. Another most objectionable point was the warning. It had been said on a former night, that this was not intended to compel American vessels to come into our ports, but they might, if they pleased, return to their own ports. Was this to be considered as satisfactory to the Americans? They come upon a trading voyage, and they are told you cannot go where you intended, without first coming into a British port, but you may, if you please, return home. If, when he practised in the court of king's Bench, he had been told, when he had a brief of great importance, that the king had issued an order that in going to Westminster Hall, he must pass through a particular street and pay toll, would it have been very satisfactory to him to have been told, we do not compel you to go to Westminster Hall, but you may, if you please, go home to your chamber with your bag and go to sleep; or if a gardener were to be told that in going to Covent Garden market he must take a circuitous route, and pay toll by the way, would it be much consolation to him to be told, we do not compel you to go to Covent Garden market—you may return home if you please, or you may strew your vegetables about the street! His lordship briefly recapitulated his arguments, and again urged the great importance of the question which was now to be decided upon by their lordships, whether all those principles of justice,

honour, and good faith, which had hitherto actuated our conduct towards other nations should at once be abrogated, and a state of barbarism substituted for civilization—whether that light which had hitherto shone pre-eminently in Britain, to guide and direct Europe, should at once be put out, and the great and just principles of the law of nations enveloped in darkness and obscurity.—The noble lord concluded by moving the following resolutions:

1st. That the power of making laws to bind the people of this realm is exclusively vested in his majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of the realm, in parliament assembled; and that every attempt to make, alter, suspend, or repeal such laws, by order of his majesty in privy council, or in any other manner than by his majesty in parliament, is unconstitutional and illegal.

2d. That the advising his majesty to issue any order in Council for dispensing with or suspending any of the laws of the realm, is a high violation of the fundamental laws and constitution thereof.

3d. That the same cannot in any case be justified, but by some unforeseen and urgent necessity, endangering the public safety.

And that in every such case it is the duty of his majesty's ministers to advise his majesty, after issuing such order, forthwith to assemble his parliament, in order both that the necessity of such proceedings may be enquired of, and determined; and that due provision may be made for the public safety, by the authority of his majesty in parliament.

4d. That the law of nations is a part of the law of the land; and that neutral nations, not interposing in the war between his majesty and his enemies, have a legal right to such freedom of commerce and navigation it is secured to them by the law of nations.

5th. That the late orders of his majesty in Council are contrary to the law of nations, inasmuch as they purport to interrupt the commerce of friendly nations, carrying on their accustomed trade in innocent articles, between their own country & the ports of his majesty's enemies, not actually blockaded; and even between their own country and those of his majesty's dominions, or of his Allies; and also inasmuch as they purport to compel such trade in future to come in the first instance under pain of confiscation, to the ports of his majesty's dominions, or of his allies, and there to submit to such regulations, restrictions, and duties as shall be imposed upon them.

6th. That by the law of nations, all independent governments have an undoubted right both in war and peace, to regulate in their own territories, and according to their own convenience, except where specially restrained by treaty, the admission or exclusion of the ships or merchandise of other states. That by the municipal law of this and other European countries it has been usual to require, that vessels trading to or from the ports thereof, shall carry such certificates or other documents, shewing in what country the vessel hath been built, fitted, or owned, by what sailors she is navigated and in what country the articles composing the cargo have been grown, produced or manufactured, as may be judged necessary to entitle them to enter.

And, that the ships of friendly nations, carrying such papers in time of war, do not thereby violate any rule of amity with other countries, or legally incur any penalty whatever, unless such papers should be found to be fraudulent.

7th. That so much of his majesty's order in Council, of the 11th of November last, as directs, that any vessels carrying any certificates or documents, declaring that the articles of the cargo are not of the produce or manufacture of his majesty's dominions, or to that effect, or carrying any other document, relating to such certificate or documents, shall together with the goods laden thereon, belonging to the persons by whom or on whose behalf any such documents were put on board, be a