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Mr. JOHNSON'S SPEECH,

ON THE SEMINOLE WAR,

WEDNESDAY, JAN. 20.

Mr. JOHNSON, of Kentucky, rose immediately after Mr. Clay. He felt himself called on, having been a member of the committee which had had this subject under consideration, and as one of the minority on the report made by it, to express his views of the questions involved in the report, and in the propositions moved by way of amendment to it. Without further preface, he proceeded to state that the conduct of Gen. Jackson, in regard to the trial and execution of Arbuthnot and Ambrister, had been the subject of censure, from a misconception of the law and of the facts connected with it; and, particularly, by confounding two principles of the laws of nations, which were in themselves separate and distinct. The general order directing the execution of these men asserted, that the subject of any nation, making war upon a nation at peace with that to which he belongs, is an outlaw and a pirate; and Mr. J. said, it was correctly asserted. And the very same page of Vattel on which gentlemen relied for the support of their doctrine, would bear him out in that for which he contended, and with which gentlemen had confounded one entirely different. That, where persons have joined the standard of a belligerent, they may claim the character and privileges of the belligerent party, was a principle of public law, was not to be denied; but, if an individual takes upon himself to create & carry on a war, without authority from any government, it was a principle equally untenable, that he is an outlaw and a pirate—not that he is either technically, but that, in fact and by analogy, he is so to be regarded. It is an established principle of public law, that the crew of any vessel, engaging in war without the authority of any commission, may be treated as pirates, and put to the sword. If, on the land, the like course be pursued, he is guilty of it as an outlaw and a bandit, and may be put to the sword. This was one principle of public law, and that which gentlemen had triumphantly asserted, (and which nobody denied,) was a wholly different one; both not only clearly supported by the authority of Vattel, but in the same page of that respected and excellent writer.

Mr. J. said he would venture to say, that every ground taken by that man whose valor and conduct on the memorable eighth of January, in the darkest period of the late war, had caused joy to beam from every face, would be found tenable on principles which have prevailed from the commencement of civilization to the present day. He pledged himself to produce chapter and verse to support his conduct in every incident of that war. He considered the essential interests of justice and of mercy to have been served in the execution of the foreign incendiaries who stimulated the Indians to barbarities on our frontier settlers; and that the military occupation of Florida by Gen. Jackson was justifiable on the broad basis of national law, and of sacred duty to his country. When gentlemen undertook to say, that Gen. Jackson had not the right of retaliation, let them recollect the cause of proposed retaliation, during the revolutionary war, for the barbarous murder of Capt. Huddell. And on whom of the prisoners in our power did the lot fall? Not on a miserable interloper, but on Capt. Asgill, an amiable and accomplished officer. What then said the Congress of the United States—that venerable and enlightening body which carried us through the Revolutionary conflict? What did they say? Why, sir, not only that the commander in chief, but that every officer on separate command, possessed the right of retaliation, and that they were to support him in the exercise of it. It was true, that Asgill was released, for reasons of policy; but the right of retaliation was fully sustained.

Four months, Mr. J. said, after the first blood was spilt in the Revolution, at the battle of Lexington, and two months after the memorable battle of Bunker Hill, which shed such a lustre upon our arms, and nearly a year before the declaration of Independence, this question of the right of retaliation was solemnly discussed and settled in the correspondence between Gen. Washington & Gen. Gage; in which the former had broadly asserted the right of retaliation, and declared that he should be governed by it. In order to take from our commanding general this right at the present day, Mr. J. said, gentlemen had again blended and confounded principles of the laws of nations, which in themselves were entirely distinct. In case of individuals in an army violating the laws of nations, and the known rules of war, was a clear principle that they may be punished with death; and it was a principle equally clear, that in contending with a savage foe, you are at liberty to retaliate on them their own usages. But gentlemen had blended these powers and rights with the right of reprisal; and had confounded the power of punishment for military offences by a court martial, with the power of putting to instant death a captive—a right inherent in the military power with which we have clothed the

commander, and the exercise of which is a question between himself and his God.

I rejoice, said Mr. J. that the honorable gentleman who last addressed you, has expressed his opinion that the intentions of Gen. Jackson, in what he has done, were good. I rejoice in it, sir, from my respect for that gentleman, whose opinion has with me more weight than that of any other individual; but this is a case in which the obstinacy of my nature will not permit me to surrender my opinion to any individual whatever.

It had been denied, that any example could be produced of military execution, at the fiat of the commanding general, in our country. Mr. J. said he would give an instance, in which two individuals were put to death by Gen. Washington. Being given up by the revolted state of Pennsylvania, as emissaries, sent by General Carlton, these men were instantly executed. For this fact, Mr. J. referred gentlemen to the Annual Register, which now lay before him.

It had been stated, that the crimes for which these men were executed, were offences not recognized by the laws of the United States. Mr. J. denied the fact, and in doing so meant offence to no one. These miscreants, who had imbrued their hands in the blood of our countrymen—the instigators of the murders, the fruits of which were three hundred scalps in one place, and fifty in another, although according to the documents read by the Speaker, it would appear that the Indians were three murders in arrears of us—these individuals had been condemned & executed in conformity to the letter, if not to the spirit, of the laws of the United States. According to our rules and articles of war, whoever should relieve the enemy with money, victuals, or ammunition, or should knowingly harbor or protect them, or hold correspondence with the enemy, were subjected to death. So far the rule as to our army, which by subsequent articles, was made so broad as to apply to the whole human family. But, if there was, in this point, any defect of power, here came in the law of nations to supply the deficiency; for that which subjects to death one of our own citizens, shall much more subject to death the foreign incendiary. Examples, in illustration of this doctrine, were plentifully scattered on the page of history. What was the fact, said he, as to the trial of the distinguished officer who was Adjutant General of the British forces, during the Revolution? He was convicted on his own confession, and by a court composed of six major generals and eight brigadier generals. Gen. Jackson, Mr. J. said, was only following in the steps of those who had gone before. He was not here, he said, about to maintain that Gen. Jackson was faultless—if he had not faults, he would not be human—but he stood here to maintain his devotion to his country; and that, in the course he had pursued in the trial and execution of Arbuthnot and Ambrister, he had only trodden in the footsteps of the immortal Washington.

As the execution of the two Indian warriors, by the exercise of a summary jurisdiction over them, & the distinction made between their case and that of the white men, the reason was obvious to every man who had ears and would hear, or who had eyes and would see. In relation to the Indian chiefs, their color was sufficient evidence of their subjection to his right of disposing of them as justice required. The law of nations clothed him with the power to put an end to their existence. As to the stratagem, of which gentlemen had complained, no one was less disposed than himself to look with a favorable eye on such stratagems as were contrary to morality. But there was no immorality in hoisting the flag of a foreign power, nor in capturing the person of your enemy when he unwarily puts himself in your power. Nor, in what had been done in relation to these Indians, was there any violation of humanity or of public law. Do they meet us in honorable combat? said Mr. J. In the case of the unfortunate Mrs. Garrar, did they meet us in honorable conflict?—When they burnt the seaman alive, whom they had previously tarred and feathered, did they meet us in open combat? Was the war one in which Greek met Greek, or an American met the citizen or subject of any civilized nation? If it were, the course of Gen. Jackson, so far from receiving approbation, would deserve execration. But, considering the treacherous enemy he had to cope with, and the object of his measures, which was to give security to the frontier, and to save the wasteful expenditure of the blood, and even of the treasure of the nation; when I think on this, said Mr. J. I do not censure Gen. Jackson; but, as before my God, I give him thanks. But for his energy, what would have been the consequence? The frontier of Georgia would have been deluged with blood, as it has been once before, and the gentleman from Georgia (Mr. Cobb) would again have called upon us, with a voice of patriotism, and a voice of thunder, too, to pay the gallant Georgians for going against the Seminoles.

With regard to the treaty of Fort Jackson, Mr. J. said, he should enter into no long argument, but he differed exceedingly from his honorable colleague. Have

we not a right, said he, to dictate terms to a conquered enemy? Was not the war which was terminated by that treaty an unprovoked war? Was it not instigated against us, and without cause, on the part of the Indians? On whose head should the blood fall, if you cannot control the Indians with the bible? I wish to God you could, said Mr. J. and towards that object I will do, and have done, as much in my sphere as any one. There is this moment, in the heart of my country, a school for the education of the Indians in the arts of civil life. But, when you come into contact with them, when they flourish their tomahawk over your head, are you to meet them with the bible in your hands and invoke their obedience of that holy religion, of which the Speaker tells us? I should be the last to raise the sword against them, if the employment of such means would appease their fury. Experience had shewn it would not; and it became necessary to meet and chastise them. And would any man say, that, having put down their hostility by force, we had not a right to dictate to them the terms of peace? We had the right; and we made the treaty. That treaty received the sanction of every part of the government, this house among them, (by the appropriation to carry it into effect) and it was too late now to disturb it.

But in regard to the Indian tribes, an extraordinary doctrine had been advanced—that they are to be considered in every respect, in negotiating with them, as independent nations. What, then, Mr. J. asked, should we say of the treaty of Greenville, depriving those tribes with whom it was made of all the superior rights of sovereignty? What was to become of the declarations of our commissioners at Ghent, where the British government demanded, as a *sine qua non*, that we should not only acknowledge the independence of the Indians, but should establish certain boundaries, within which the lands belonging to the Indians should never be sold to us? With what indignation had that proposition been met! The Indians, Mr. J. said, were in fact mere tenants at sufferance; not that he would treat them with harshness—for he never would. That the principle that we have a right to occupy the country, independently of the qualified right of the Indians was recognized, not only by the treaty of Greenville, but by the treaty with Spain herself, who, in the treaty of 1795, stipulated to keep the Indians within her boundaries from disturbing our frontiers. And yet, after all this, it was contended, that we had been fighting with a sovereign and independent power.

As to the war, the constitutionality of which had been doubted, Mr. J. said, the President of the U. S. was not only authorized, but it was his bounden duty, to make war on the Seminole Indians. Admit, for the sake of argument, that, beyond our boundary, they were to be considered as exercising a sovereign and independent authority. What would gentlemen gain by that admission? If it were true, had we not a right to trace them to their strong holds, even in a neutral country? On that point, the expositors of the laws of nations were not silent. It was there laid down, that you may pursue a retreating enemy into a neutral country, if the government of that country, either from partiality to him, or from inability to prevent it, shall not stop the progress of the retreating army.

Now, as to another point, which, perhaps, considering it as too delicate, the military committee had not thought proper to approach. Mr. J. said he should be deterred by no such motive, from examining the question of the power of the President to prosecute this Indian war, and from censuring him, if, in doing so, he usurped power, or exceeded his duty. As early as the year 1787, the Congress had authorized the stationing of troops on the frontier, to protect it from the Indians, and the calling out of the militia for the same purpose. And this power had been acted on from year to year, until the law of 1795 settled the point conclusively, that without a declaration of war by Congress, the President had the right to make war upon the savages; or in the words of the law, on the Indian tribes.

Let us, said Mr. J. look at our own powers—and how we have discharged them—instead of attempting to divest other branches of the government of their powers. What was our duty? To provide for calling out the militia—for what? To execute the laws, to suppress insurrection, and to repel invasion. It was on that principle that the power was granted to the Executive of this country to chastise the ruthless savages for individual murders, or for murders committed with their combined force. Has the President, then, said Mr. J. violated his authority? Certainly not. And if you take from him this authority, which he has so rightly exercised, what is to become of our citizens on the frontiers? The heart of our country might be penetrated, and the savages besiege our very doors, whilst we are making long speeches about the policy and humanity of repressing their hostilities. Had such been the case in the recent instance, either from a defect in the law, or in the execution of the law, the people would have said, our government is a rope of sand, and the blood and

treasure spent in its establishment has been lavished in vain. According to the first word of military command, a little varied, it is made the duty of the executive to take care that the laws of the Union are executed, and that invasion is repelled; and for this purpose he may use the regular or militia force of the country. Would it not be an invasion, to have our helpless women, and the infant descendants of those who have fought our battles, butchered by the indelicate tomahawk and scalping knife? And would it not be a violation of the laws of the country, to permit the hands of the Indian to be embred in the blood of our citizens?

It has been represented, in palliation of Indian hostility, and in derogation from the justice of the war, that individuals of the whites had stolen cattle belonging to the Indians. If such were the fact, Mr. J. said, was it not known that these offenders might be individually punished? But was it not known that the character of Indian war, unless where the Indians had in some degree received the light of civilization, was indiscriminate murder? Did not President Washington make war on them for eleven years, from 1783 to 1794, without an express authority by law for doing so? When the gallant Scott, of Kentucky, led his Kentucky brethren against the Indian enemy, was it in consequence of a formal authority to make war, or under an appropriation for the expense, merely, of the expedition? And if we were not at liberty to pursue this course, in what condition would be placed the unfortunate settler on the frontier of Georgia, in Alabama, in Mississippi, and in Michigan?

If he was justified in right and in the strictest interpretation of law in what he had done, as Mr. J. contended Gen. J. was, he could not see on what principle so great a hostility was raised against one of the most distinguished officers of the country; who had borne the helmet in the front of battle in fighting its cause; whose every object was the good of his country—and who enjoyed the affection of the country in a degree not to be taken from him but by treason or the imputation of improper motives. Do we not, said Mr. J. stand in need of military fame? Do we not want it to secure us respect in Europe? Do we not want it at home?

Mr. J. then proceeded to touch upon the opinion of his honorable friend and colleague—for whom he felt not only friendship, but affection—that these incendiaries were put to death without necessity. He argued, that though, after destroying Mickasuky and burning the Suwaney towns, Gen. Jackson thought the war was at an end, he was afterwards convinced he had been mistaken; so much so that he had found it necessary afterwards to go to Pensacola, and to leave two companies to scour the country around it, who were now fighting gallantly against the savages, who would have deluged the country in blood but for these measures. It was kind, if not just, to Gen. Jackson, to take the reasons which he himself assigned as the ground of his measures. He stood before this House not only as a great captain, but as a man of sound sense and discretion. Gentlemen had said the war was at an end. But how many of the enemy had been killed? Look to the fact, in relation to the power of the enemy. They yet existed, when the sentence of death was carried into effect against Arbuthnot and Ambrister, in a force of greater amount than that which Gen. Jackson had with him. Look at the communication of Arbuthnot, stating their force to be 3,500 men; suppose these instigators of the war had been suffered to remain and go at large—suppose the benign influence of mercy, in the breast of this honorable and respectable court martial, had weighed down the scale of justice, and these men had been discharged, what would have been the situation of the frontier of Georgia? Would it not have been the same as during the British war? These ignorant savages were deluded by their abettors into a belief that they were competent to cope with the forces of the United States. Of the twelve chiefs who signed the power of attorney to Arbuthnot, though two had been hung, there yet remained ten, and three hundred men who formed their command, to make battle against our forces under the instigation of the miscreants who had before stimulated them to war against us, and to their own ultimate ruin. Mr. J. was proceeding to shew that these men deserved the name of miscreants, when on suggestion of a gentleman near him, he gave way for a moment.

And the committee rose.

THURSDAY, JAN. 21.

The committee having again taken up the subject of the Seminole War—Mr. JOHNSON resumed the speech which was interrupted by yesterday's adjournment. He congratulated himself, he said, that the difference of opinion on this occasion was not a factious difference. When he glanced at the characters of those who had already spoken on opposite sides of the question, he saw with pleasure that this was no mere party squabble. He took this opportunity to disclaim, in the most direct and positive manner, any intention to wound the feelings of any of

his valued friends who were opposed to him on this question; and, though the interest and welfare of the community required a free and unreserved discussion, he declared he should feel the same warmth of friendship to-day towards gentlemen, as friends and politicians, which he did before the commencement of this debate.

He had already stated, he said, that Gen. Jackson displayed more knowledge in the wilds of Florida, on this subject, than any member who had taken part in this discussion; and that gentlemen had blended two principles in the laws of nations together, the distinction between which Gen. Jackson had seen and observed. The one was the case of volunteers entering a foreign service, for the purpose of improving themselves in the use of arms and the knowledge of the art of war—which case is thus stated in Vattel, p. 401, sec. 230: "The noble view of gaining instruction in the art of war, and thus acquiring a greater degree of ability to render useful services to their country, has introduced the custom of serving as volunteers even in foreign armies; and the practice is undoubtedly justified by the sublimity of the motive. At present, volunteers, when taken by the enemy, are treated as if they belonged to the army in which they fight. Nothing can be more reasonable: they, in fact, join that army, and unite with it in supporting the same cause; and it makes little difference in the case whether they do this in compliance with any obligation, or at the spontaneous impulse of their own free choice." Such was the case of Kosciusko, of Fayette, and the other illustrious foreigners who entered our armies during the revolution, who were volunteers in the best of causes, but whose rights would not have been lessened had the cause been that of despotism and tyranny, instead of that of freedom and independence. But this case was widely different from that of interlopers, excitors of wars, and enemies of the human race, who might be hung up, and ought to be, by military law, as so many robbers and pirates. In the course pursued by Gen. Jackson, then, and in his doctrine to which exception has been taken, he is even more than borne out by writers on the laws of nations, as Mr. J. shewed by the following references: Vattel, p. 400, sec. 226. "Even after a declaration of war between two nations, if the peasants of themselves commit any hostilities the enemy shows them no mercy, but hangs them up as he would so many robbers or banditti. The crews of private ships of war stand in the same predicament: a commission from the sovereign or admiral can alone, in case they are captured, ensure them such treatment as is given to prisoners taken in regular warfare." Martens, p. 272, b. 8. "The violences committed by the subjects of one nation against those of another, without authority from their sovereign, are now looked upon as robberies, and the perpetrators are excluded from the rights of lawful enemies." Page 285. "Those, not authorized from their sovereign, who take upon themselves to attack the enemy, are treated by him as banditti." P. 284. "Those who, unauthorised by the order of their sovereign, exercise violence against an enemy, and fall into that enemy's hands, have no right to expect the treatment due to prisoners of war; thh enemy is justifiable in putting them to death as banditti." The evidence before the court sufficiently established the facts on which, under the above passages of the law of nations, Gen. Jackson was authorized, if not bound, to proceed.

Was it supposed by gentlemen, Mr. J. asked, that Gen. Jackson was so ignorant of the language of his country that he did not understand the meaning of the words "pirate and outlaw." An outlaw this convict certainly was, as out of the protection of the sovereignty of Great Britain or of any other nation. In relation to the term "pirate," it had other meanings than its technical one: there were pirates on land as well as on the ocean. We are not here, said Mr. J. to enquire whether Gen. Jackson used technical terms, but whether he did substantially or illegally right. Whilst we are searching our law books and libraries for our definitions, I hope we shall not lose sight of the difference between our situation and that of the general while in the field; whilst our heads rest on downy pillows, and we can rise and lie down when we please, he had an object to accomplish at every hazard, and at every cost, which he could not have attained if he had not acted as he did. Would you rather, said Mr. J. that these men were living and the country deluged in blood, or that these men should have suffered according to their deserts? These men had been guilty of that for which one of our own citizens would have been put to death; and they were properly as well as legally put to death, in pursuance of Gen. Jackson's object, which was, according to his instructions, to put a speedy and effectual

* Articles of war—56. "Whoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor, or protect an enemy, shall suffer death, &c.

Do, 57. "Whoever shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer death." &c.