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FOR THE NATIONAL INTELLIGENCER.

ORATION

Delivered by JOHN NICHOLAS *of the state of New-York, on the 10th June.*

(CONTINUED.)

The decree according to this construction contained three things which it alleged to be equally at variance with the rights of neutrals and the interests of G. Britain.

1. The confiscation of all produce of British industry or manufacture.

2. The exclusion from the ports of France of neutral vessels, which had touched at ports, *though employed in innocent commerce.*

3. The declaring G. Britain to be in a state of blockade, *though France was unable to invest a single port.*

The note declares the determination of the king of G. Britain to retaliate the injuries of this system if executed on neutrals and submitted to by them, and reserves the right of withholding his ratification, if before the treaty returns from the U. S. the enemy shall not have either have formally abandoned or "*tacitly relinquished*," his unjust pretensions, or the U. S. shall not have, by its conduct or assurances, given security to his majesty that it will not submit to such innovations.

No man can deny that, if our government had ratified the treaty with this explanation, it would have been an acknowledgement of the claims on neutrals, which G. Britain set up by this note, and of an obligation on the U. S. to resist what the note alleged to be violations of neutral rights. Not only the obligation of this treaty on G Britain would have depended on it, but our conduct in all times to come would be tried by the same rule. And what was the law which we should have bound ourselves to enforce? That France should receive, and of course consume British manufactures whenever they were carried there by an American owner and should receive American ships going from British ports. You will please to observe that we were not called upon to protect our property and ships which were found in French ports by the decree, which we might rightfully do; but we were called upon to assert a right to carry them there in defiance of the decree, and for this claim (now yielded as I shall show by G. B. herself) no authority has ever been, or can be found either in the laws of nations or our treaties with France.

There is another part of the claim to which there is no objection in point of principle, but of so little importance to G. Britain in practice, that it would probably not have been mentioned if it had not been to give color to the other untenable claims. This is to resist the pretended blockade of the British islands. Of this pretended blockade we had a right and ought to complain, because it might have some injurious effect, was a dangerous precedent and furnished pretences to G. Britain, which, as it has turned out, might be put to most iniquitous uses; but it is probable, if this had stood alone in the decree, that it never would have been noticed by the British government, as it was a fact, afterwards proved in Parliament, that it did not raise insurance in G. Britain on the trade with the U. S. at all. The objection to the decree in this sespect, made by the note itself, is that it must be wholly inoperative, France not being able to keep a force before a single British port. It is the more probable that she would not have taken notice of this part of the decree, if it had stood alone, because she herself had carried pretended blockades so much beyond the truth I have said enough on this subject to prepare you to decide on the conduct of President Jefferson in rejecting this treaty without submitting it to the Senate. No treaty can be made without the consent of the Senate; but a President cannot justify making a treaty against his judgment if they should advise it. Will any man say that this treaty ought to have been ratified, loaded as it was with this note? should the President have brought such obligations on his country not only for the present but all future time? The obligations we were to incur, were as impracticable as they were unreasonable Of course, while we were bringing ourselves under bondage to G. Britain we should have been losing the benefits of the treaty itself; we never could have come up to the terms on which alone we were to have enjoyed them. If it was wrong that the treaty should be ratified, ought Mr. Jefferson to have summoned a Senate from all parts of the U. S.? Would it not have been a mockery on him to summon them, and inform them he wished their advice upon a treaty which, according to his judgment, he should never ratify?

I must beg here to remark that this note of the British commissioners admits the claim of G. Britain on the U. S. arising out of the Berlin decree to be wholly contingent; that it will never exist if France either formally abandons or tacitly relinquishes her unjust pretensions—that of course the only obligation on the U. S in the then state of things, was to demand of the French government an explanation of the decree and whether it was intended to operate against the U. S.

Notwithstanding this admission, in seven days after signing the treaty, the British government issued that order of the 7th of January, which is this day to cease to operate on the U. States. The effect of this order was to restrain neutrals from going from one enemy's port to another and from the port of one enemy to that of another. Neither of these prohibitions was justifiable, but the last is wholly unsupported both by principle and practice. Nothing could more strongly declare the understanding of G. Britain as to what might be expected from the U. S. in resisting the Berlin decree, than this conduct, and that she set no value on our interference in the only case where we could rightfully interfere, the case of a pretended blockade, and nothing could more fully proclaim her determination to act as she thought proper, without regard to our rights, than her taking a step so injurious in its operation, at a time when she had entered into stipulations for preserving the relations of amity and commerce. The then ministry were probably driven by public sentiment to this outrage on decency, and they probably made this sacrifice of themselves to save their power. No other act of the British government has so much the character of a national one, for it was adopted by the men who composed the new ministry, so far as it went, and condemned for not going farther. They at the same time shewed an hostility to the U S. which promised no good to us, from the power which they afterwards acquired. It is to be remarked, that the order of November has always been justified by the new ministry as an extension only of the principle of that of January, as in truth it is; and that in January had no foundation in justice, for the Berlin decree was not even known in the U. States.

The right claimed by both orders in council depends on the acquiescence of neutrals in the unjust decrees of France. Even when founded on an acquiescence in fact, the doctrine of a right in the other belligerent to retaliate in the manner he shall think fit cannot be conceded without great danger. Here I must remind you of the three parts of which the Berlin decree consisted. Two extremely important to the commerce of G. Britain, but no way against the rights of neutrals, the third of little or no importance to the interests of G. B. but a violation so far as it should be executed of the rights of neutrals. Suppose, under the blockading part of the Berlin decree, of which we have a right to complain, a single capture should be made, must it be incumbent upon us to go to war with France or yield G. B. the right of cutting off our whole commerce with the continent of Europe, for which she wanted a pretext to revenge the injuries she receives from those parts of the decree of which we have no right to complain? I anticipate that every reasonable man will answer in the negative. But the doctrine to which G. B. has been driven, by the refutation of her charges against us of acquiescing in the French decrees, is too monstrous to be tolerated a moment—it is that there is "an unquestionable right of his majesty to retort upon the enemy the evils of his own injustice," and "if third parties incidentally suffered by these retaliatory measures, they were to seek their redress from the power by whose original aggression that retaliation was occasioned"—Mr. Canning's letter of the 23d September. The effect of this rule would be to give a right of acting, on the first impulse, without hearing the neutral at all. The doctrine asserted is nothing more or less, than a positive claim to the benefit of the labor of neutrals, whereas all that belligerents have a right to require is impartiality in the application of it; and no claim can ever possibly arise on neutrals in a case like this but in consequence of some alledged fraud on their neutrality. This can never be, where time is not given for demanding satisfaction, nor can it ever be plausibly alledged, when the injury is not of sufficient magnitude to justify the neutral in resorting to arms. Mr. Canning found it easier and safer to assert a doctrine as untenable as this than to prove the fact which was involved in the doctrine on which the orders were founded; he found it easier to build up a new edifice than prop the old one after Mr. Madison's irresistable attack of the 25th March, 1808.

I have sufficiently shewn, by the admission of the British government itself, that they had no cause to complain of the U S. at the time of issuing the order of January. I will now shew, from the best established facts and their own admission, that they had no cause to complain of us at the time of issuing the order of November.

The correspondence between General Armstrong, our minister at Paris, and Decres, the French minister of Marine, has been so much a topic of controversy between the parties in this country that few are unacquainted with it. Bonaparte and his minister of foreign affairs were attending on the war with Russia after the conquest of Prussia. While thus engaged, the Berlin decree arrived at Paris and our minister applied to the minister of Marine; the person charged with the execution of the decree, for information, whether it was to be considered as contravening the convention with the U. S. He declared it as his opinion that the decree did not affect the convention, using at the same time, however, such cautionary expression as were natural in the service of such a master. The French council of prizes on the 5th March following expressed their doubts about the interference saying "that the decree said nothing of its own influence over the convention." Gen. Armstrong, 12th November, 1807, (almost 12 months after the decree) says in a letter to Mr. Madison, "I yesterday received a copy of the decree of the council of prizes in the case of the Horison. This is the first unfriendly decision of that body under the arrete of the 21st November 1806 (the Berlin decree)." The course adopted with respect to this ship shews that a new practice was to be adopted. The emperor was referred to for the meaning of the decree, which never could have happened if he had been satisfied with former decisions, or if the council had not wanted a justification for departing from them. The enemies of our government here have laid hold of an expression of this council of prizes, (when obeying the new orders of their master) with respect to the construction of the Berlin decree, given to our minister by Decres the minister of Marine, that the construction was "private" not "public," and on this and the authority of the cautionary expression of Decres, before alluded to, have taken it for granted that Decres was an unauthorised person in this case and that it was the only information sought for by our government and its minister.

This conclusion they continue to propagate, although the communications to the last and former Congress have proved beyond all question, that our government was prompt in requiring explanations and remonstrating against the application of the Berlin decree to the U. S and that there was actually an exemption of us from its influence, until the emperor in the month of September, gave to the council of prizes the new instructions (differing in nothing from a new decree but in their secrecy) under which the *Horison* was condemned. It was so improbable that a minister, growing old in his station and as intelligent as general Armstrong, should have misunderstood the sources of information or that he should have chosen to go to the wrong one, that it certainly must have required a disposition to believe the fact to gain it notice. The communication of the President to the session of Congress before the last, should have put an end to the hope of finding it here, for we there find an application from Gen. Armstrong to Mr. Champagny the minister of foreign relations and his reply, as late as the month of August, which are fully satisfactory. As well as I recollect (for I have not preserved the President's communication of that year) our *Charge des Affaires* in Spain had been informed by the Spanish government that the French government would be applied to for their construction of the Berlin decree, in order to an uniformity of conduct towards the U. S. under the decrees of both governments, which were alike. On this information Gen. Armstrong applied to the minister of foreign relations and requested an early attention to this subject, expressing a hope that his information would conform to the uniformly favorable construction and practice adopted in France on the Berlin decree. To this letter (written as I believe on the occasion I have mentioned) Mr. Champagny replied to this effect and nearly in these words, "That he had supposed Gen. Armstrong satisfied by the information he (Gen. Armstrong) had received from the minister Decres, but as he wished further satisfaction he (Mr. C.) would request it of the same minister and when it was received would communicate it to Gen. Armstrong." This letter of Champagny is referred to in a letter from Gen Armstrong to him, dated 12th Nov. 1807, and communicated to Congress in their last session, in which he tells Mr. C. "that he (Mr. C.), as late as the 21st Aug. (1807), considered the minister of marine (Decres) as the natural organ of his majesty's will in whatever regarded the decree aforesaid (the Berlin decree) and actually applied to him for information respecting it." There it appears that the person who the federalists say ought to have been applied to, considers the minister Decres as the best authority. It will appear also from General A's correspondence that the same minister Decres was the organ of communication to our government on similar subjects (vide page 37 of the Comm.) a letter from him to Gen. A. in reply to one from Gen. A. and (p. 44) a letter from Gen. A. to Mr. Champagny.

Thus it appears that there was no acquiescence on the part of our government, under the Berlin decree, and that there was no execution of it upon our neutral commerce, at the date of the order of January, and that there was none known, even to the British government, at the date of the order of November, much less to the government of the United States, the decree in the case of the Horizon having passed the 16th of October, 1807, and being received by our minister at Paris only on the 11th November. It appears also from Mr. Madison's letter to Mr. Erskine that the British government were regularly informed of the truth of the case.

But I have it in my power to shew from the highest British authorities that the government of Great Britain had accurate information of their own in strict conformity with that possessed by our government; that they knew of no case of capture under the blockade declared by the Berlin decree at the date of the orders of the 11th November, although those orders pretend to justify themselves under the acquiescence of neutrals in the injuries of the decree.

On several petitions to the Parliament of Great Britain against the orders in council as destructive to the trade of G. B. witnesses were heard in support of the allegations of the petition & the ministry brought witnesses in support of the policy of the orders. The question was as to the trade of G. Britain before the orders and after, without particular view to the justification of their conduct towards the United States. Many respectable witnesses declare that insurance between Great Britain and the United States had not been affected by the Berlin decree, & on examining the testimony on the other side it will appear that there was no contradiction of this assertion. I have never seen the whole body of evidence, but I take my information from the evidence quoted by Mr. Brougham in a speech to the House of Commons and from a ministerial pamphlet, written to justify the orders in council and to answer the attacks made upon them, called "hints to both parties." This pamphlet has been extensively circulated in this country by the supporters of British measures and may therefore be considered as of authority with those from whom it is used. The writer speaking of the commerce of the U States, says, "This intercourse was further interrupted by the measures of the enemy; by the Berlin decree of November, 1806, and *the subsequent enforcement of it in September last.*" He annexes the testimony on which he relies. According to him the execution of the Berlin decree, in any instance, was so late that it could not have been before known, if known at all, in the United States; and of course no acquiescence could be pretended; but when you look at the testimony on which he relies, you will find that there is not one tittle to contradict the testimony of the witnesses of the petitioners with respect to the trade between Great Britain and the United States, and that it relates wholly to the trade in American vessels between the ports of Great Britain and the continent, with which we have nothing to do, it being clearly a trade which the United States are not bound to protect. It will be obvious from the same testimony, that the cargoes sent in the course of this trade were on account and at the risk of British owners, & that American vessels were only a cover; and it will appear probable from an Amsterdam paragraph also cited by this author from the testimony given, that the vessels sailed under false papers, pretending to have taken in their lading for the United States. The paragraph is in these words—"Amsterdam, 12st August, 1807. The ship Maria arrived here three days ago, but instead of being allowed to land her cargo, the receivers have been put under obligation to bring the necessary proofs that he came from that part from which his papers are made out. Other ships are in similar circumstances and it seems that our government receives very particular accounts from the Danish harbors." We are otherwise informed that American clearances in perfect form were to be bought in London. To prohibit such a trade as this, there wanted no Berlin decree and it is only to be wondered at, that it should have been tolerated so. But I have before shewn that if any American had bona fide bought the goods, and shipped them in an American vessel, he had no protection to expect from his government.

A late speech of Mr. Canning's in the British Parliament goes the full length of establishing the conclusion, which results from this long enquiry, that the British government had no injury to complain of through the violation of our neutral rights and to shew that the system she had adopted was one of policy. In debate on Mr. Whitbread's motion for addressing the king to adopt conciliatory measures towards the United States, Mr. C. says "Much was said about observance of the law of nations. He would not say that the orders of council were an exact application of it; he would allow they were rather an extension of that law; but an extension called for and justified by the new order of things that had arisen in the world. The Berlin decrees were evidently acts of hostility against England, and as such England must have met them. Under a pretence of a municipal regulation, these were intended to exclude British commerce from every port; but that they had none of the features of ordinary municipal regulations, which obtain in peace as well as in war."

From this it is evident that the orders were a project to fulfil the expections which are always raised by a new ministry and an experiment on an enemy who had baffled every effort which the British government had made against him.

I turn with pleasure from the consideration of measures which seek their justification in falsehood, to those of my country, which, having just views, has pursued them with undeviating rectitude.

That an embargo should have been treated as the resort of cowardice, of mean spirited desertion of the rights which nature had given us, was certainly among the greatest impositions of the present time. If a certain measure of suffering in ourselves was necessary to make an attack upon an enemy honorable, I ask in what way were the government of this country or those who supported them to meet that suffering so certainly as under an embargo. Was it in war? No certainly, for the danger was to be encountered for the most part by the hire of men who considered it desirable.—The reverse is the truth. Under an embargo, all must suffer nearly in proportion to their property, and of this suffering there was no evasion; no lucrative offices grew out of it. It afforded the adventurer no field for enterprize or peculation, nor does it make some rich at the expence of many poor. These are the blessings of war which make it desired by so many. To all such an embargo was a poor lifeless thing. Although very far from being pleasant in its operation on me, I liked it because I believed it honorable to my country to shew that it was capable of such self-denial, and because I anticipated the best effects on foreign nations. I was the more confident in my expectations from the sensation I found among that class of people, which I had known to be desirous of war for the last 16 years. I concluded that the kindred classes in in other countries, who had become callous to all the impressions of war and its attendant evils might be as sensible to a measure which would follow them to their houses, blend itself with their occupations and find in all some place to operate on which had not been numbed by constant pressure. Another extraordinary circumstance attending the embargo is, that those who approve it have labored so much to prove that it was was not laid with a view to the orders in council or to coerce the nations who had injured us. What could place its fitness for this purpose in a stronger point of view than the solicitude of its opponents to establish this point: In their attempt to divest their adversaries of the credit of adopting the expedient for this purpose, was it not acknowledging a fitness in the measure?

Perhaps no instance can be found when men have been so remarkably forced to discover their real sentiments. Though we might be satisfied with the triumph of principle, it will not be right to let the authors of the measure go without the credit of it. Those who stickle so violently against the coercive design of the embargo, rely on President Jefferson's message, in which he speaks only of the preservation of our ships and seamen. They do not consider that however probable it might be, that Great Britain would issue such orders, yet it would not be decent in the President to say that he expected such an act of injustice from her. Her former conduct gave reason to expect that she would act without notice, and scrape all the seas of American property, and this would be an additional argument for the measure of embargo; but it would not have been decent in the President to anticipate such dishonesty. No man could shut his eyes on the danger which threatened us from Great Britain, and therefore it was sufficient to assign the reasons which were assigned, as any other, by rousing pride and resentment, might tend to defeat the intended purpose. I can bear testimony to the intention of the actors in this business, one of whom wrote to me as soon as the act passed, and assigned, as one reason for it, the danger which threatened us from Great Britain, saying that Great Britain had apprized us in the note to the rejected treaty that she contemplated retaliation; that the condemnation of the Horizon, of which they were just informed, would furnish her with a pretext, if she waited for one, but that they had reason to believe, from the English prints; that the step had been already taken; to this was added the expectation of bringing both nations to justice. Several members of Congress, who voted for the embargo, have declared in their places, that they voted for it on this account, and to coerce the offending nations, and that they had declared it at that time.

Whatever might have been the design with which it was laid, it is hard to conceive a measure better fitted to the state we were in, whether consi-