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FROM A BOSTON PAPER OF NOVEMBER 14.
DOCUMENTS

Presented to Congress with the President's Message.

No. 1.

MR. FOSTER TO MR. MONROE.

Washington, July 3, 1811.

SIR,—I have had the honor of stating to you verbally the system of defence to which His Majesty has been compelled to resort for the purpose of protecting the maritime rights and interests of his dominions against the new description of warfare that has been adopted by his enemies. I have presented to you the grounds upon which His Majesty finds himself still obliged to continue that system, and I conceive that I shall best meet your wishes as expressed to me this morning, if in a more formal shape I should lay before you the whole extent of the question, as it appears to His Majesty's government to exist between Great-Britain and America.

I beg leave to call your attention, Sir, to the principles on which His Majesty's Orders in Council were originally founded. The decree of Berlin was directly and expressly an act of war, by which France prohibited all nations from trade or intercourse with Great-Britain under peril of confiscation of their ships and merchandise; although France had not the means of imposing an actual blockade in any degree adequate to such a purpose. The immediate and professed object of this hostile decree was the destruction of all British commerce through means entirely unsanctioned by the law of nations, and unauthorised by any received doctrine of legitimate blockade.

This violation of the established law of civilized nations in war, would have justified Great-Britain in retaliating upon the enemy by a similar interdiction of all commerce with France, and with such other countries as might co-operate with France in her system of commercial hostility against Great-Britain.

The object of Great-Britain was not, however, the destruction of trade, but its preservation under such regulations as might be compatible with her own security, at the same time that she extended an indulgence to foreign commerce, which strict principles would have entitled her to withhold. The retaliation of Great-Britain was not therefore urged to the full extent of her right; our prohibition of French trade was not absolute but modified, and in return for the absolute prohibition of all trade with Great-Britain, we prohibited not all commerce with France, but all such commerce with France as should not be carried on through Great-Britain.

It was evident that this system must prove prejudicial to neutral nations; this calamity was foreseen, and deeply regretted. But the injury to the neutral nation arose from the aggression of France, which had compelled Great-Britain in her own defence to resort to adequate retaliatory measures of war.—The operation on the American commerce of those precautions, which the conduct of France had rendered indispensable to our security, is therefore to be ascribed to the unwarrantable aggression of France, and not to those proceedings on the part of Great-Britain, which that aggression had rendered necessary and just.

The object of our system was merely to counteract an attempt to crush the British trade: Great-Britain endeavored to permit the continent to receive as large a portion of commerce as might be practicable, through Great-Britain; and all her subsequent regulations, and every modification of her system by new orders or modes of granting or withholding licences, have been calculated for the purpose of encouraging the trade of neutrals through Great-Britain, whenever such encouragement might appear advantageous to the general interests of commerce, and consistent with the public safety of the nation. The justification of His Majesty's Orders in Council, and the continuance of that defence, have always been rested upon the existence of the decrees of Berlin and Milan, and on the perseverance of the enemy in the system of hostility which has subverted the rights of neutral commerce on the continent; and it has always been declared on the part of His Majesty's government, that whenever France should have effectually repealed the decrees of Berlin and Milan, and should have restored neutral commerce to the condition in which it stood previously to the promulgation of those decrees, we should immediately repeal our Orders in Council.

France has asserted that the decree of Berlin was a measure of just retaliation on her part, occasioned by our previous aggression; and the French government has insisted that our system of blockade, as it existed previously to the decree of Berlin, was a manifest violation of the received law of nations; we must therefore, sir, refer to the articles of the Berlin decree, to

find the principles of our system of blockade which France considers to be new, and contrary to the law of nations.

By the 4th and 8th article it is stated as a justification of the French decree, that Great-Britain "extends to unfortified towns and commercial ports, to harbors, and to the mouths of rivers, those rights of blockade, which by reason and the usage of nations are applicable only to fortified places; and that the rights of blockade ought to be limited to fortresses really invested by a sufficient force."

It is added in the same articles that Great-Britain "has declared places to be in a state of blockade, before which she has not a single ship of war, and even places which the whole British force would be insufficient to blockade, entire coasts, and a whole empire."

Neither the practice of Great-Britain nor the law of nations has ever sanctioned the rule now laid down by France, that no place, excepting fortresses in a complete state of investiture, can be deemed lawfully blockaded by sea.

If such a rule were to be admitted, it would become nearly impracticable for Great-Britain to attempt the blockade of any port of the continent, and our submission to this perversion of the law of nations, while it would destroy one of the principal advantages of our naval superiority, would sacrifice the common rights and interests of all maritime states.

It was evident that the blockade of May, 1806, was the principal pretended justification of the decree of Berlin, though neither the principles on which that blockade was founded, nor its practical operation, afforded any colour for the proceedings of France.

In point of date, the blockade of May 1806, preceded the Berlin decree; but it was a just and legal blockade according to the established law of nations, because it was intended to be maintained, and was actually maintained by an adequate force appointed to guard the whole coast described in the notification, and consequently to enforce the blockade.

Great-Britain has never attempted to dispute, that in the ordinary course of the law of nations, 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. The blockade of May 1806, was notified by Mr. Secretary Fox on this clear principle, nor was that blockade announced until he had satisfied himself by a communication with His Majesty's Board of Admiralty, that the Admiralty possessed the means and would employ them, of watching the whole coast from Brest to the Elbe, and of effectually enforcing the blockade.

The blockade of May, 1806, was therefore (according to the doctrine maintained by Great-Britain) just and lawful in its origin, because it was supported by both in intention and fact by an adequate naval force. This was the justification of that blockade, until the period of time when the Orders in Council were issued.

The Orders in Council were founded on a distinct principle, that of defensive retaliation. France had declared a blockade of all the ports and coasts of Great-Britain, and her dependencies, without assigning, or being able to assign, any force to support that blockade. Such an act of the enemy would have justified a declaration of the blockade of the whole coast of France, even without the application of any particular force for that service. Since the promulgation of the Orders in Council, the blockade of May 1806, has been sustained and extended by the more comprehensive system of defensive retaliation on which those regulations are founded. But if 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 should be maintained by a due application of an adequate naval force.

America appears to concur with France in asserting that Great-Britain was the original aggressor in the attack on neutral rights, and has particularly objected to the blockade of May, 1806, as an obvious instance of that aggression on the part of Great-Britain.

Although the doctrines of the Berlin decree, respecting the rights of blockade, are not directly asserted by the American government, Mr. Pinckney's correspondence would appear to countenance the principles on which those doctrines are founded. The objection directly stated by America against the blockade of May 1806, rests on a supposition that no naval force which Great-Britain possessed or could have employed for such a purpose, could have rendered that blockade effectual, and that therefore it was necessarily irregular, and could not possibly be maintained in conformity to the law of nations.

Reviewing the course of this statement, it will appear that the blockade of May 1806, cannot be deemed contrary to the law of nations, either under the objections

urged by the French, or under those declared or instigated by the American government, because that blockade was maintained by a sufficient naval force; that the decree of Berlin was not therefore justified either under the pretext alleged by France or under those supported by America; that the Orders in Council were founded on a just principle of defensive retaliation against the violation of the law of nations committed by France in the decree of Berlin; that the blockade of May, 1806, is now included in the more extensive operation of the Orders in Council; and lastly, that the Orders in Council will not be continued beyond the effectual duration of the hostile decrees of France, nor will the blockade of May 1806 continue after the repeal of the Orders in Council unless His Majesty's government shall think fit to sustain it by the special application of a sufficient naval force.—This fact will not be suffered to remain in doubt, and if the repeal of the Orders in Council should take place, the intention of His Majesty's government respecting the blockade of May 1806, will be notified at the same time.

I need not recapitulate to you the sentiments of His Majesty's government, so often repeated, on the subject of the French Minister's Note to General Armstrong, dated the 6th of last August. The studied ambiguity of that note has since been amply explained by the conduct and language of the government of France, of which one of the most remarkable instances is to be found in the speech of the chief of the French government on the 17th of last month to certain deputies from the free cities of Hamburg, Bremen and Lubeck, wherein he declares that the Berlin and Milan decrees shall be the public code of France as long as England maintains her Orders in Council of 1806 and 1807.—Thus pronouncing as plainly as language will admit, that the system of violence and injustice of which he is the founder, will be maintained by him until the defensive measures of retaliation to which they gave rise on the part of Great-Britain shall be abandoned.

If other proofs were necessary to show the continued existence of those obnoxious decrees, they may be discovered in the Imperial edict dated at Fontainebleau in Oct. 19, 1810, that monstrous production of violence, in which they are made the basis of a system of general and unexampled tyranny and oppression over all countries subject to, allied with, or within the reach of the power of France; in the report of the French Minister for foreign affairs dated last December, and in the letter of the French minister of justice to the president of the Council of prizes. To this letter, sir, I would wish particularly to invite your attention; the date is the 25th December, the authority it comes from most unquestionable, and you will there find, sir, the Duke of Massa in giving his instructions to the Council of prizes in consequence of the President of the United States' proclamation of Nov. 3d, most cautiously avoiding to assert that the French decrees were repealed, and ascribing not to such repeal, but to the ambiguous passage which he quotes at length from M. Champagny's letter of Aug. 5, the new attitude taken by America; and you will also find an evidence in the same letter of the continued capture of American ships after November, and under the Berlin and Milan decrees, having been contemplated by the French government, since there is a special direction given for judgment on such ships being suspended in consequence of the American proclamation, and for their being kept as pledges for its enforcement.

Can then, sir, these decrees be said to have been repealed at the period when the proclamation, of the President of the United States appeared, or when America enforced her non-impertation act against Great-Britain? Are they so at this moment? To the first question, the state papers which I have referred to appear to give a sufficient answer. For even supposing that the repeal has since taken place, it is clear that on November 3d, there was no question as to that not being then the case; the capture of the ship Orleans packet seized at Bordeaux, and the Grace-Ann-Green, seized or carried into Marseilles, being cases arising under the French decrees of Berlin and Milan as is very evident. Great-Britain might therefore complain of being treated with injustice by America, even supposing that the conduct of France had since been unequivocal.

America contends that the French decrees are revoked as it respects her ships upon the high seas, and you, sir, inform me, that the only two American ships taken under their maritime operation, as you are pleased to term it, since Nov. 1, have been restored; but may not they have been restored in consequence of the satisfaction felt in France at the passing of the non-impertation act in the American Congress, an event so little to be expected; for otherwise, having been captured in direct contradiction to the supposed revocation, why were they not restored immediately?

The fears of the French navy however, prevent ma-