

Lord William Wyndham Grenville

Orders in council (1808)

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ORDERS IN COUNCIL.

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Lord Grenville began with observing, that it was common for speakers, in order to arrest the attention of their audience, to exaggerate the importance of their subject; but, of the magnitude of the present subject, so far from its admitting of exaggeration, it was impossible for any eloquence to convey an adequate idea. He was glad to see that at last the public were becoming alive to its importance, and he ventured to predict, that the anxiety which was now felt concerning it would daily increase, as there was too much reason to dread that misfortune would be accumulated upon misfortune, should the measures be persevered in which gave rise to this evening's discussion. He was decidedly of opinion that the house ought to go into a committee upon the Orders in Council, because of the variety of questions which grew out of them, involving their legality or illegality, their constitutional or unconstitutional tendency, their policy or impolicy—in a word, their bearings upon the prosperity and the very existence of the country. It was the duty of the house, and he conjured them not to lose sight of it at a moment so critical and perilous, to intervene between the country and the ruin by which it was threatened, by the rashness, improvidence and folly of the government. So pressing was the emergency, that the smallest delay might be attended with the most destructive consequences, and the most irremediable evils; he hoped therefore, that their intervention would take place before things arrived at a state in which it might no longer be effectual. Nothing to him was personally more painful, than being obliged to combat the sentiments of the noble lord opposite to him (earl Bathurst), for whom he entertained the highest esteem and respect, but the task was imposed upon him by an imperious sense of public duty, and he trusted that if any expression should escape him of a nature to give any unpleasant feelings to the noble lord, that he would believe that it would give him (lord G.) greater [478] pain in uttering, than it could possibly give the noble lord in hearing it. He should begin however, with what had fallen from the noble and learned lord (Eldon), who, he was happy to find, had abstained on this evening from justifying his own conduct, by attempting to criminate that

of his predecessors, a very unsatisfactory mode of defence, which of late had been too much practised. Still, however, the noble and learned lord had not defended the Orders in Council upon their own merits; but, by way of calling off the attention of the house from the measure now before them, he had directed it to a measure of the late administration, for which he was disposed to give them credit, but between which and the present there was no analogy whatever, and which, if it was defensible, it was precisely because it rested on principles directly adverse to those by which the Orders in Council, dated last Nov. were dictated. The noble and learned lord had dwelt much upon the blockade of the French ports from the Elbe to Brest, that had been proclaimed in the decree issued by the late ministers, but all the conclusions which he attempted to deduce from it fell to the ground, when the single fact was stated, that this was not a fictitious, but a real blockade, perfectly conformable to the understood and acknowledged laws of war, and that the publication of the proclamation was accompanied with directions to the admiralty to carry it into effect. The late ministers in this case therefore, instead of violating the law of nations, upon any plea of necessity or convenience, or temporary expediency, had done nothing more than apply the principles of this law to the circumstances under which they were called to act. The noble and learned lord farther contended, that in the preamble of this Decree of blockade the principle of retaliation was set forth: he reminded, however, the noble and learned lord, that this principle was not acted upon; they had merely asserted, that they would have been justified in recurring to it, always understood, that it should be exercised within the law of nations, and instead of recurring to it they adopted a measure of quite a different nature. He intreated, however, their lordships to get out of the eternal circle of justifying one act by comparing it with another; to abstain from the petty warfare of crimination and re-crimination, and to canvass the measure, now before [479] them, on its own individual merits. In this view it was important to inquire how far it was consistent with the principles of national law; and, in the next place, how far it was consonant with the maxims of sound policy. In the first place, he examined it in reference to national law, and here it was extremely important not to confound the law of retaliation with the law of self-preservation. The latter

was paramount to all laws, and might justify even such a horrible act as the attack upon Copenhagen, provided the case was clearly and satisfactorily made out. The right of retaliation on the other hand, could only with justice be exercised upon an enemy, and could not be extended to the detriment of a neutral power. If a neutral power granted certain advantages to the enemy, then we had an undoubted right to insist upon being admitted to the same advantages; or if a neutral power acquiesced, from weakness, in the demands of the enemy, all that we could in justice require was, that in consequence of this demand the enemy should not be placed in a better situation in regard to her than we were. But we had no right, because the enemy violated the rights of one neutral, to violate the rights of all neutrals; for if this principle were once admitted, it would lead to an extension of hostilities over the whole civilized world. He then applied these general principles to the present case. The meaning of the French Decree was, he allowed, to put the ports of G. Britain in a state of blockade; but if a measure was to be founded upon it by the government of this country, it ought to be directed to its effects, not to the form in which it was expressed. The first question, then, which arose was, whether it had ever been executed against America, or acquiesced in by the government of the United States? for if it should turn out that it never had been applied to the commerce of America, and that it never had been submitted to by that power, the framers of the Orders in Council had not a foot of ground on which to stand. Now, his lordship asserted, that Denmark, immediately after the Decree was published, received explicit assurances from the French government that it did not go to capture the ships of neutrals trading upon the high seas, but that its object was merely to prescribe the terms on which the ships of foreign nations were to be admitted into the ports of France. The same explanation of the nature and tendency of the Decree was [480] given to America, and as a proof of the sincerity of the explanation, an American vessel, which was carried into a French port, was released by order of their court of admiralty. It was understood in the same manner in Spain, and ship, which was carried into a port of that kingdom, under similar circumstances, was released by order of their court of prizes. But even supposing that the French decree did not admit of this mitigated construction, it would by no means follow that we

had a right to publish orders which amounted to a total prohibition of American commerce, till we saw what steps America would take in consequence of it. The government of Denmark had submitted to the decree, which accounted for the spirited note written by his noble friend (earl Grey) on the occasion, in reply to a very insolent one that had been received (p. 402). But, a different language had been held to America, because her conduct was the reverse of that of Denmark; and because at that time a negotiation was then depending between this country and the United States by which all their differences were likely to be adjusted.—Here the noble lord repelled the accusation which had been brought against his two noble friends who negociated the treaty, of their having made any unbecoming concessions in the course of that negociation. He ventured also to predict, that if there were any persons mad enough to be induced by the motive of obtaining a little temporary popularity to adopt a different tone from what at that time animated his majesty's councils, that they would find such popularity to be of very short duration.—But to return to the subject immediately before the house, not only had M. Decres, the minister of the French Marine, assured gen. Armstrong that it was not intended to execute the decree against America, than this assurance was fortified by the fact that it had never been executed. This matter, however, did not rest wholly either upon the assurance or the fact, or upon both together. In the President's speech at the opening of Congress, on the 19th of Feb. 1807, a document which had not reached the late ministers previous to their dismissal from office, but which must have been received by their successors about the end of last March, he had avowed his determination, to demand an explanation from the French government of the Decree, and an assurance that it was not intended by any of its provisions to break in upon the existing treaty between France and America. Was it to be argued, then, that we were better judges than Mr. Jefferson of what trench'd upon American rights or American interests? Or were we to set ourselves up and to say to the government of that country, that we did not like the terms on which the ruler of France had explained his intentions in regard to her? His lordship particularly called the attention of the house to the preamble of the Orders, and to a document which had this day been laid upon the table. In this preamble

the foundation of the Orders was stated to be, neutral states not having obtained the revocation of the French Decree, a circumstance, which, he contended, was of no importance whatever; for, if it was not executed, it was the same as if it had never been published. They did not dare to assert that America had acquiesced in it; and, indeed, how could they, since it appeared that as late as the 18th of Oct. last, they had received a Note from the two American Ministers, then in London, assuring them that France had uniformly conformed to the articles of the Treaty between that country and America, in the execution of the decree? And, notwithstanding this assurance, in three weeks after the date of this note, these Orders in Council were issued, by which the whole commerce of America was to be annihilated; because, forsooth, she had not Obtained the revocation of a decree, which in regard to her was the same as if it never had been passed. Perhaps he should be told, that the fact as stated by the American ministers, was not true. But in the first place, he could scarcely believe that they would have hazarded a false assertion, and in the next place, if ministers did not believe them, why did they not contradict them, or at least call upon them for proofs of the truth of their declaration. It was remarkable too, that this Note was written in answer to a question, as if ministers had been determined to leave the injustice of their country on record. If any thing, after all the circumstances which he had enumerated, was necessary to evince the determination of America not to submit to any invasion of her rights on the part of France, the embargo lately laid upon her shipping, not after receiving the British Orders in Council, but after the receipt of advices from France, would be amply sufficient for that purpose. In short, he could not conceive that a more compleat [482] case of non-acquiescence in the Decree could be made out than the American government had to lay before the world. The late administration had requested information from the government of America of its intentions in consequence of the French Decree; but before an answer had been returned to this demand, the measures in question were adopted, in which a gross and flagrant violation of public faith had been committed.—The noble lord next considered the Orders in Council as a violation of the municipal law of the country. He contended that they were violations of eight or ten positive statutes of the realm; of the

Navigation Act; of the act for regulating the commerce of the Isle of Man; of the act for regulating the commerce of Guernsey and Jersey; and of the act for regulating the commerce of hostile (not of neutral) ports. If the lords of the privy council, at any future time, thought the laws not so good as they could make them, they had nothing to do but to follow the example set them in the present instance, and alter and suspend them at pleasure. The old arguments which were used in favour of the dispensing power, of raising ship-money, &c, were, like the present, justified upon the plea of necessity. He had always thought, however, that our ancestors had set these question, and all of a similar nature, to rest at the time of the Revolution, when it was stipulated in the Bill of Rights that in every emergency which might render an alteration necessary in the established laws of the country, that alteration should be made by the king, lords, and commons in parliament assembled. In all cases in which this constitutional principle had been departed from, there had been three points required to be proved, 1. The existence of an urgent necessity; 2. The impossibility of assembling parliament in time to provide for it; and, 3. That the remedy did not overstep the demands of the necessity. In the present case, since the French Decree, there had been two sessions of parliament, and since the Orders in Council were published, parliament had been twice prorogued.—The noble lord next pointed out the unintelligibleness of the Orders. He would take upon himself to prove that in four clauses of the same paragraph they contained four direct contradictions. After much study, however, he believed that he had at last found out what they meant to express, and he was not a little proud of the solution of such a [483] problem, particularly as an eminent civilian (Mr. Robinson,) had declined altogether to interpret them, and they had been misunderstood by the most eminent writer upon political economy now in the country; and by Mr. Baring, in the pamphlet which he had published upon the subject, and upon which his lordship bestowed the most unqualified praise. The noble lord proceeded to shew their extreme impolicy. They went to effect a radical and fundamental change in the whole commercial relations of the country, both with belligerent and neutral powers. They tended to subject this country to a loss in the same proportion that they distressed the enemy, and in the same proportion that we gained from them, they

afforded relief to the enemy. This principle of forcing trade into our markets, would have disgraced the darkest ages of monopoly. The impediments which it was intended to throw in the way of the importation of cotton into France, would have the effects of stimulating that government to encourage its cultivation in quarters where it did not grow, of producing a redundance of the article in the foreign market, of lowering its price, and consequently of diminishing the cultivation.—He then shewed that the orders defeated their own object, because by making it necessary for every foreign ship to touch at a British port, to pay a certain tribute, and this circumstance exposing every such ship to capture and confiscation by the French decree, it was obvious that no ship would submit to the ignominy, merely for the purpose of exposing itself to the subsequent danger. It was surely better then for ministers to retract what they had done, than to persist in an error to avoid the shame of retraction.