THE OHIO DEMOCRAT.

"UBI LIBERTAS, IBI PATRIA."—Cicero.——"Where liberty dwells, there is my Country."

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CONGRESSIONAL.

SPEECH OF MR. BENTON,

ON THE

CASE OF McLEOD.

IN SENATE, Monday, June 14th, 1841—On motion of Mr. Rives to refer so much of the President's message as relates to our foreign affairs to the Committee on Foreign Affairs.

Mr. BENTON would take this opportunity to express his opinions on the subject before the Senate, and would take the occasion to say that he would always choose to speak during the usual hours of business in the Senate, but if prevented from speaking at such hours he must have recourse to those which were unusual, and at this season of the year oppressive. He would speak in the night if he could not in the day; refusals to adjourn should not debar him of his right. He had a right to speak, and should exercise that right, not to annoy the Senate or to delay business, but to discharge his duty to the country, and to show that he was able and determined to assert and to vindicate his rights.

Mr. B. believed that the gentleman whose correspondence was the subject of discussion, and who might be considered chiefly interested in it, (the Secretary of State,) would have no objection to this discussion; neither to its character, nor the time it would consume. That gentleman had done, at a former session, infinitely more than it was proposed to do now. Mr. B. spoke of the extra session of May, 1813, called by Mr. Madison to provide means of carrying on the war, and so large a proportion of which was consumed in partisan attacks upon the character and measures of the Administration. Mr. B. was a young man at that time, a visiter at Washington, and often took his stand among other visiters in the crowded and heated lobby of the House. Standing in that place he saw a Representative from the State of N. Hampshire, now the Secretary of State, (Mr. Webster,) submit his celebrated resolutions against the administration of Mr. Madison; and during the month which he remained at Washington, he heard these resolutions debated, day in and day out, by the whole phalanx of the Federal party, to the exclusion of the business for which Congress was called together, and to the delay of the supplies which the invaded and bleeding condition of the country so imperiously demanded. He heard the mover of the resolutions deliver his withering denunciations against his own Government; he saw him followed by the solid column of the Federal battalion then in the House; he saw the Democracy, patient and forbearing, giving them all the time they would ask, and all the scope they would take; and no one availed himself more fully of Democratic forbearance than the mover of the resolutions himself. He had time and scope to his heart's content in attacking his own Government, and that in time of war, and at a called session of Congress. The recollection of this must have its effect upon the mind of him who was then the subject of so much forbearance. He must be willing and even anxious, to extend to others the indulgence of which he has had the benefit. He must be willing that those who please should have their time and scope, (at this extra session of Congress, called in time of peace to take snap judgments on the American people,) to arraign an act of his, in which how as near as thirty years ago, he has the misfortune to appear on the wrong side of his country's cause.

Mr. B. said the history of our country contained a warning lesson to gentlemen who take the side of a foreign country against their own: he alluded to the case of Arbuthnot and Ambrister, seized among the Seminole Indians in 1818, and hung as outlaws and pirates by the orders of Gen. Jackson. The news of that execution was heard with joy by the American people, who considered these Englishmen as a thousand times more culpable than the wretched savages wham they stimulated to the murder of women and children, and who had abandoned their own country, and the white race to which they belonged, to join savages against a country with which their own Government was at peace. The country heard the news of the execution with joy; they approved the act of Gen. Jackson, Not so with the politicians—the politicians of the Federal school especially. They condemned it; partisan presses attacked it; and when Congress met, committees of each House of Congress reported against it—loudly condemned it—and were followed by a crowd of speakers. All the phrases now heard in claiming exemption for McLeod, and bewailing his fate, were then heard in deploring the fate of Arbuthnot and Ambrister. Violation of the laws of nations—inhuman—unworthy of the nineteenth century—shocking to humanity—barberous—uncivilized, subjecting us to reprisals, and even to war from England—drawing upon us the reproaches of Christendom, and even the wrath of Heaven; such were the holiday phrases with which the two Houses of Congress then resounded To hear what was said, and it would seem that the British lion would be instantly upon us. We were taught to tremble for the return news from England, Well! it came! and what was it? Not one word from the British Government against the act of Jackson! Not the scrape of a pen from a Minister on the subject! Not a word in Parliament except the unsupported complaints of some solitary members—just enough to show, by the indifference with which it was received, that the British House of Commons had no condemnation to pronounce upon the conduct of General Jackson. Their silence justified him in England, while committees and orators condemned him here: and this justification from abroad, in a case where two Englishmen were actually hanged, should be a warning to gentlemen how they should commit themselves in a case where an Englishman is merely in the hands of justice, and has nothing to fear from "GOD AND THE COUNTRY" if he is as innocent as he alleges, and as humanity would wish him to be.

Gen. Jackson was right, and the committees and orators who condemned him were wrong. He was right in the law and in the application of the law. He had no musty volumes of national law to refer to in the swamps of Florida; and he needed none. He had the law of nature, and of nations, in his heart. He had an American heart, and that heart never led him wrong, when the rights, the interest, and the honor of the country were at stake. He hung the Englishmen who were exciting savages to the murder of our women and children; and the policy of the measure is no less apparent than its legality. Before that time, Englishmen were eternally in the ranks of the Indians, stimulating them to hostilities upon us; since that time no Englishman has been heard of among them. The example was wholesome—its effect salutary. It has given us twenty five years of exemption from English interference in our Indian hostilities; and if the assassins of the Caroline shall be hung up in like manner, it will give us exemption from future British outrage along the extended line which divides the Union from the Canadas.

It is mournful, Mr. President, continued Mr. B. to see gentlemen of eminent abilities consulting books to find passages to justify an outrage upon their own country. Better far to throw away books, and go by the heart. Then, at least they would always have the consolation of being on their country's side. Better even to take the rule of the illustrious Commodore whose actions have shed so much lustre upon the American name, (Decatur,) and go for their country right or wrong. Then they would always have at least their hearts on their side. Besides, there is no book which fits our case—which was written for the duplicate Governments which we possess. We have State Governments as well as a General Government; and these State authorities have their rights, and are sovereign within them. The protection of the lives, liberty and property of their citizens, is among these rights; the punishment of murder, arson, and burglary, are among the rights of the States. If there was nothing in the law of nations, as written in the books, to recognize these rights, it would be necessary and proper for us to cause a new line to be written in those books. But this is not the case. The law of nations, as they now stand, is sufficent for us. The passage quoted from Vattel by the Senator from Pennsylvania is pointed and conclusive in our favor. It applies to the case of McLeod, and covers it, and if we give up that man, to the demand of the British Government, we shrink from the defence of right, and suffer the law of nations to be violated in our persons.

This brings me to the case before us. What is it? The facts of the case are spread out in official documents, and the evidence of them are clear and undeniable. An American steam ferry boat traverses the Niagara river; she carries passengers and property from one shore to the other. The English believe, and perhaps truly, that she carries men and arms to the insurgents in Canada: and without any appeal to our Governments, either State or Federal—without applying to us to put our own laws in force against her—an English officer, of his own head, without the knowledge of the British Government, determines to do—what? Not to watch the suspected vessel, arrest her in the fact, seize the guilty and spare the innocent, but to steal upon her in the night, board her asleep, and destroy her at the American shore, under the flag of her country. In the evening of the meditated outrage, volunteers are called for—fifty or sixty dashing, daring fellows—ready to follow their leader to the devil, for that was the language used; and it proves the expedition to have been a diabolical one, and worthy to be led as well as followed by demons. The arms were sabers and pistols; the season of attack midnight, the means of approach, light boats and muffled oars; the progress, silent and stealthy, that no suspirious sound should alarm the sleeping victims. The order was, death and no quarter. Thus prepared and led, they approach the boat in the dead of the night—reach her without discovery—rush on board—fly to the berths—cut, slash, stab and shoot all whom they see—pursue the flying, and besides those in the boat, kill one man at least upon the soil of his country, far from the water's edge. Victorious in an attack where there was no resistance, the conquerors drew the vessel into the midst of the current, set her on fire, and with all her contents, the dead, the living, the wounded and dying, send her in flames over the frightful cataract of the Niagara. McLeod, the man whose release is demanded from us, was (according to his own declarations, made at the time in his own country, repeated since in ours, and according to the sworn testimony of one of the survivors) an actor in that piratical and cowardly tragedy. According to his own assertions, and the admissions of his comrades, he was one of the foremost in that cruel work, and actually killed the "damned Yankees," to use his own words, with his own hands.

All this was in December of the year 1837. It filled the country with indignation. It fired the bosoms of the border settlers on a line of fifteen hundred miles. Retaliation was in every heart, threats in every mouth and war imminent. Mr. Van Buren was then President. To calm the spirits of the excited, proclamations were issued to them. To prevent acts of retaliation, troops were raised and stationed along the line. To obtain redress for the outrage to our citizens, and the insult to our national character, application was made to the British Government to repair the wrong that was done. That Government delayed its answer to our just demand, avoided the assumption of the criminal act, excused and justified, without assuming it, rewarded the offenders with titles, and pensions, and praises, and clearly encouraged them to do the like again. Diplomacy was still drawing out its lengthened thread, still weaving its long and dilatory web, still Penelopizing, when the same Mcleod, the boaster in Canada of his active share in this triple crime of midnight murder, arson and robbery, crosses over to the American side and repeats, in the hearing of Americans, and on the spot which had been the scene of his exploit, the ambitious boast of his participation in it. Justice then took hold of him. The laws of New York laid their hands upon him and a grand jury of the vicinage on an indictment regularly preferred, returned a true bill against him. A trial of course, was to take place in courts of the State whose laws had been violated, whose citizens had been murdered and robbed, whose peace had been disturbed and whose authority had been set at defiance. The news of this proceeding flies to the British Minister here; that Minister addresses a note to the Secretary of State, (Mr. Forsyth,) demanding the release of McLeod and the Secretary answered, by the direction of the then President, [Mr. Van Büren,] that this man being charged with offences against the laws of New York, the General Government had no right to interfere, and should not do so. This answer was read in the Senate in January last, when most of the present members of the body were then present—when the present Secretary of State and the present Attorney General were both present; when all the old Senators now here were present; and when this response of Mr. Forsyth, refusing to give up McLeod, or to interfere with the courts of New York, received the unanimous approbation of this chamber!

Mr. B. repeated the expression, unanimous approbation! and said he would pause for correction, if he was mistaken. He paused. Several Senators exclaimed. "yes, yes."

Mr. B. continued. I remember the reading of that letter well, and the feeling of unanimous approbation which pervaded the whole chamber when it was read. Every Senator that spoke expressed his approbation. No one signified dissent, and the feeling was then universal that the proper answer had been given by Mr. Forsyth; the answer which the law of nations, the dignity of the Union, and the rights of New York required to be given. If I am wrong in my recollection, I repeat the request, let me be corrected now.

[Several voices cried out, "right, right." No one said the contrary.]

Mr. B. resumed: a great point; one vital and conclusive in this inquiry, is now established. It is established, that in the month of Janury last, when Mr. Forsyth's letter was read in this chamber, we were all of opinion that he had given the correct and proper answer and among the Senators then present were the present Secretary of State, the present Attorney General, all the old Senators now present, and four-fifths of the whole number now present. In a word, the Senate was constituted as it now is, with the exception of nine members who have gone out, and the same number who have come in.

In January last, as we see, it was the unanimous sense of the Senate that McLeod should not be given up—that the course of justice in New York should not be interupted; and this also, I feel justified in saying, was the sense of the House of Representatives. The McLeod correspondence was communicated to that body. Five thousand copies of it were moved to be printed. A reference of the whole was made to the Committee of Foreign Relations; and the judgment of the House appeared to be the same of that of the Senate.

In the month of January last, it may then be asserted, that the two Houses of Congress approved the decision of President Van Buren; and, according to that decision, McLeod was neither to be given up, nor the course of justice in New York interfered with by the Federal Government.

Mr. Fox, received the answer of Mr. Forsyth—transmitted it to his Government—and received from that Government precise instructions to avow and assume the attack on the Caroline as a national act—to make a peremptory demand for the release of McLeod—to threaten us with serious consequences in case of refusal—and as the British newspapers said, to demand his pass-ports and leave the country—if his demand was not immediately complied with It was on the evening of 4th day of March—the day of inauguration of the new President—that the news of these instructions arrived in this city, and along with them the war threats and the war speeches of the press and public men of England—the threats of many papers to send admirals and war steamers to batter down our cities—and the diabolical speech of a Peer of the realm, in the House of Lords, [Lord Mountcashel,] to excite our three millions of negroes to insurrection—to raise all the Indians against us—and to destroy our finances by bursting the paper bubbles upon which they floated.

It was on the evening of the 4th day of March that these instructions, this demand, this threat, and all these war annunciations arrived in this city. The new President had just been inducted: the men who were to compose the Presidential council were fully known and I undertook at once to tell what would be done. I said to several—some now in this city, if not in this chamber—McLeod will be given up; not directly but indirectly. Underhanded springs will be set in motion to release him; and a letter will afterwards be cooked up to show to Congress and the people, and to justify what had beed done. This is what I said; persons are now in this city to whom I said it: and now let us resume the narrative of events—let us follow the current of facts—and see what was done by the new Administration which had just been inducted into office in the midst of triumphal processions, under the fire of cannon, the beathing of drums, the display of flags, and with all the glorious pomp and circumstance of war. Let us see what they did.

On the 12th day of March, the new Administration having had time to organize, Mr. Fox addressed Mr. Webster a formal demand, in the name of his Government, for the release of McLeod; and goes on to say:

"The grounds upon which the British Government make this demand upon the Government of the U. S. are these: that the transaction on account of which McLeod has been arrested, and is to be put on trial, was a transaction of a public character, planned and executed by persons duly empowered by her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defence of her Majesty's territories and for the protection of her Majesty's subjects; and that consequently those subjects of her Majesty who were engaged in that transaction were performing an act of public duty for which they cannot be made personally and individually answerable to the laws and tribunals of a foreign country.'

And after enforcing this demand, by argument, contesting the answer given by Mr. Forsyth, and suggesting the innocence of McLeod, the letter proceeds to say:

"But, be that as it may, her Majesty's Government formally demand upon the grounds already stated, the immediate release of Mr McLeod; and her majesty's Government entreats the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand."

This letter to Mr. Webster bears date on the 12th of March, which was on Friday, and will be considered as having been delivered on the same day. On the 15th of the same month was Monday, Mr. Webster delivers to the Attorney General of the United States, a set of instructions, and delivers a copy of the same to Mr. Fox, in which he yields to the demand of this minister, and despatches the Attorney General to New York, to effect the discharge of the prisoner. The instructions, among other things, says:

"You are well aware that the President has no power to arrest the proceeding in the civil and criminal courts of the State of New York. If this indictment were pending in one of the courts of the United States; I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a nolle prosequi to be entered

"Whether in this case the Government of New York have that power, or, if he have, whether he would not feel it his duty to exercise it, are points upon which we are not informed.

"It is understood that McLeod is holden also in civil process, sued out against him by the owner of the Caroline. We suppose it verp clear that the Executive of the State cannot interfere with such process; and indeed, if such process were pending in the courts of the United States, the President could not arrest it. In such and many analogous cases, the party prosecuted and sued must avail himself of his exemption or defence, by judicial proceedings, either in the court into which he is called, or in some other court. But whether the process be criminal or civil, the fact of having acted under public authority and in obedience to the orders of lawful superiors, must be regarded as a valid defence; otherwise, individuals would be holden responsible for injuries resulting from the acts of Government, and even from the operation of public war.

"You will be furnished with a copy of this instruction for the Executive of New York, and the Attorney General of that State. You will carry with you also authentic evidence of the recognition by the British Government of the destruction of the Caroline, as an act of public force, done by natoinal authority.

"The President is impressed with the propriety af transferring the taial from the scene of the principal excitement to some other and distant county. You will take care that this be suggested to the prisoner's council. The President is gratified to learn that the Governor of New York has already directed that the trial take place before the Chief Justice of the State

"Having consulted with the Governor, You will proceed to Lockport, or wherever else the trial may be holden, and furnish the prisoner's council with the evidence of which you will be in possession, material to his defence. You will see that he have skilful and eminent counsel, if such be not already retained; and although you are not desired to act as counsel yourself, you will cause it to be signified to him, and to the gentlemen who may conduct his defence, that itis the wish of this Government that, in case his defence be overruled by the court in which he may be tried, proper steps be taken immediately for removing the case, by writ of error, to the Supreme Court of the United States.

"The President hopes that you will use such despatch as to make your arrival at the place of trial sure before the trial comes on; and he trusts you will keep him informed of whatever occurs by means of a correspondence through this Department."

A copy of these instructions, as I have said, were delivered to Mr. Fox at the time they were writtten. At the same moment they delivered to the new Attorney General, [Mr. Crittenden,] who thus equipt with written directions for his guide, and accompanied by an officer of high rank in the United States army, [Major General Scott,] immediately proceeded in the business of his mission to the State of New York, and to the place of impending trial, at Lockport. About forty days thereafter, namely on the 24th April, Mr. Webster replies to Mr. Fox's letter; elaborately reviews the case of McLeod—justifies the instructions—absolves the subject—and demands nothing from the sovereign who assumes his offence.

Thus, what I had said on the evening of the 4th of March had come to pass. Underhanded springs had been put in motion to release the man; a letter was afterwards cooked up to justify the act.

This, sir, is the narrative of the case—the history of it down to the point at which it now stands; and upon this case I propose to make some remarks, and, in the first place to examine into the legality and the propriety of the mission in which our Attorney General was employed. I mean this as a preliminary inquiry, unconnected with the general question, and solely relating to the sending of our Attorney General into any State to interfere in any business in its courts. I believe this mission of Mr. Crittenden to New York was illegal and improper—a violation of our own statutes, and will test it by referring to the law under which his duties are defined. That law was passed in 1789, and is in these words:

"And there shall also be appointed a meet person, learned in the law, to act as Attorney General of the United States, who shall be sworn, or affirmed, to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the U. States shall be concerned, and to give his advice and opinion upon questions of law, when required by the President of the U. States, or when requested by any of the heads of the Departments, touching any matters that may concern their departments; and shall receive such compensation for his services as shall be by law provided."

Here, said M. B., are the duties of the Attorney General. He is subject to no orders whatever from the Secretary has nothing to do with him except to request his legal advice on a matter which concerns his department. Advice on a question of municipal law was doubtless what was intended; but no advice of any kind seems to have been asked of the Attorney General. He seems to have been treated as the official subordinate of the Secretary—as his clerk or messenger—and sent off with instructions which he was to read & execute. This was certainly an illegal assumption of authority over the Attorney General, an assumption which the statue does not recognize. In the next place, this officer is sent into a State court to assist at the defence of a person on trial in that court for a violation of the State laws, and is directed to employ eminent and skilful counsil for him—to furnish him with evidence—to suggest a change of venue—and to take a writ of error to the Supreme Court of the United States, if the defence of the prisoner be overruled by the State court. If brought to the Supreme Court by this writ of error—a novel application of the writ, it must be admitted—then the Attorney General is to appear in this court for the prisoner, not to prosecute him in the name of the United States, but to dismiss the writ. Now, it is very clear that all this is foreign to the duty of the Attorney General—foreign to his office—disrespectful and injurious to the State of New York—incompatable with her judicial independence—and tending to bring the General Government and the State Government into collision. McLeod, a foreigner is under prosecution in a State Court for the murder of its citizens; the importance of the case has induced the Governer of the State, as he has officially informed its Legislature, to direct the Attorney General of the State to repair to the spot, and to prosecute the prisoner in person; and here is the Attorney General of the United States sent to the same place to defend the same person against the Attorney General of the State! The admonition to Mr. Crittenden, that he was not desired to act as counsil himself, was an admission that he ought not to act—that all he was a doing was illegal and improper—and that he should not carry the impropriety so far as to make a public speech. He was to oppose the State without publicly appearing to do so; and, as for his duty in the Supreme Court of the United States, he was to violate that outright, by acting for the accused, instead of prosecuting for the United States. From all this I hold it to be clear; that our Attorney General has been illegally and improperly employed in his business; that all he has done, and all the expense that he had incurred, and the fee he may have promised, are not only without law; and that the rights of the State of N. York have not only been invaded and infringed in this interference in a criminal trial, but that the rights and interests of the owners of the Caroline, who have brought a civil action against McLeod for damages for the destruction of their property, have been also gratuitously assailed in that part of the Secretary's instructions in which he declared that such civil suit cannot be maintained. I consider the mission as illegal in itself, and involving a triple illegality, *first*, as it concerns the Attorney General himself, who was sent to a place where he had no right to go; *next*, as it concerns the State of New York, as interfering with her administration of justice; and, *thirdly*, as it concerns the owners of the Caroline, who have sued McLeod for damages, and whose suit is declared to be unmaintainable.

I now proceed, Mr. President, to the main inquiry of the case, the correctness and propriety of the answer given by our Secretary of State to Mr. Fox, and its compatability with the honor, dignity, and future welfare of this Republic.

I look upon the "*instructions*" which were given to Mr. Crittenden, and a copy of which was sent to Mr. Fox, as being THE ANSWER to that Minister; and I deem the letter entitled an answer; and dated forty days afterwards, as being a mere afterpiece—an article for home consumption—a speech for Buncombee, as we say of our addresses to our constituents—a pleading intended for us, and not for the English, and wholly designed to excuse and defend the real answer so long before and so promptly given. I will give some attention to this, so called, letter, before I quit the case; but for the present my business is with the "*instructions*," a copy of which being delivered to Mr. Fox, was THE ANSWER to his DEMAND; and as such was transmitted to the British Government, and quoted in the House of Commons as being entirely satisfactory. This quotation took place on the 6th day of May, several days before the, so called, letter of the 24th of April could possibly have reached London. Lord John Russel, in an answer to a question from Mr. Hume, referred to these instructions as being satisfactory, and silenced all further inquiry about the affair, by showing that they had all they wanted.

I hold these instructions to have been erroneous, in point of national law, derogatory to us in point of national character, and teeming to the future degradation and injury of this Republic.

That the Secretary has mistaken the law of the case in consenting to the release of McLeod is persuasively shown by referring to the opinions of the two Houses of Congress in January last. Their opinions were then unanimous in favor of Mr Forsyth's answers; and that answer was a peremptory refusal either to admit that McLeod ought be released, or to interfere in his behalf with the courts of New York. The reasons urged by Mr Fox in his letter to Mr. Forsyth for making the demand, were precisely the same with those subsequently given in the letter to Mr. Webster. The only difference in the two demands was in the formality of the latter, being under instructions from his Government, and in the threat which it contained. In other respects the two demands were the same so that, at the outset of this inquiry, we have the opinions of the Secretary of State, the Attorney General, and the body of their friends in the two Houses of Congress to plead against themselves.

I next refer to the arguments which have been used by my friends who have preceded me, especially the opening speech of the Senator from Pennsylvania, (Mr. Buchanan,) and his pertinent and conclusive quotation from Vattel. The whole argument was close and pointed, and the quotation was absolutely irresistible. It was in these words:

"However, as it is impossible for the best regulated State, or for the most vigilant and absolute sovereign to model at his pleasure all the actions of his subjects, and to confine them on every occasion to the most exact obedience, it would be unjust to impute to the nation or the sovereign every fault committed by the citizens. We ought not than, to say, in general, that we have received an injury from a nation, because we have received it from one of its members.

"But if a nation or its chief approve and ratifies the act of the individual, it then becomes a public concern, and the injured party is then to consider the nation as the real author of the injury, of which the citizen was, perhaps, only the instrument.

"*If the offended State has in her power the individual who has done the injury, she may without scruple, bring him to justice and punish him.* If he has escaped, and returned to his country, she ought to apply to his sovereign to have justice done in the case."

This is the case before us. The malefactor is taken, and is in the hands of justice. his imputed crime is murder, arson, and robbery. His Government by assuming his crime cannot absolve his guilt, nor defeat our right to try and punish him according to law. The assumption of his act only adds to the number of the culpable, and gives us an additional offender to deal with them, if we choose. We may proceed against one or both; but to give up the individual when we have him, while