

DOCUMENTS.

WHICH ACCOMPANIED THE MESSAGE OF THE PRESIDENT OF THE U. STATES.

(CONTINUED.)

As to the demand in relation to the colonial trade, it has been the less apprehended, as it is not in itself connected, nor has it ever before been brought into connection, either with the case of the orders in council, or with that of the Chesapeake. And it was reasonably to be presumed if the idea of such a condition had in the first instance proceeded from the erroneous belief that it was not objectionable to the United States, that it would not have been persisted in after that error had been ascertained and acknowledged.

The other demand could still less have been apprehended. Besides the inevitable and incalculable abuses incident to such a licence to foreign cruisers, the stipulation would touch one of those vital principles of sovereignty, which no nation ought to be expected to impair. For where would be the difference in principle between authorising a foreign government to execute, and authorising it to make laws for us?—Nor ought it to be supposed that the sanctions and precautions of the United States, in the cases of the prohibited trade in question, would prove inefficacious for its purpose.

Had none of those obstacles presented themselves to the course corresponding with the sentiments and disposition of the President, I should have felt great pleasure in giving you formal assurances of his readiness to execute the conditional authority with which he is invested for restoring in its full extent, as far as it may depend on the United States, the commercial intercourse of the two countries, and that he would, moreover, be disposed to extend the experiment of a friendly negotiation to every point of difference and of mutual interest between them. If, indeed, in the event of a successful termination of the relations to the case of the Chesapeake, it be thought that a removal of the difficulties arising from the orders in council might be facilitated by comprehending them in a general negotiation, and the operation of the orders can in the mean time be suspended, the door might be considered as immediately open to that course of proceeding.

To such a suspension no reasonable objection can be made, if, as you have stated, the orders in council, as now modified, leave the trade of the United States nearly as great as it would be without the existence of such orders, so long as France and the other powers shall continue their decrees, and inasmuch as a discontinuance of their decrees by those powers, confessedly requires an immediate and entire revocation of the orders in council.

That a suspension of the orders, with a view to their being brought into a general negotiation, is more reasonable than a temporary submission to their authority, by the United States with that view, is obvious from the reflection that such a submission would necessarily involve a relinquishment of the principle which they have steadfastly asserted, whereas a discontinuance of the orders in council in the present actual state of things, would not be incompatible with the principle on which they were originally founded.

This principle was, as you well know, the necessity of retaliating, through neutrals, injuries received through a violation of their rights by another belligerent.

In the actual state of things, and under the actual modification of the orders in council produced by it, it is admitted by you, that the orders have no practical effect in abridging the commerce of neutrals, and can of course have no retaliating effect on the other belligerents.

Although it cannot be allowed to be true that the orders in council are no longer injurious to the commerce of the United States, it is certainly true that they produce no degree of injury to the enemies of Great Britain that can countenance the retaliating plea alleged in support of them.

What, permit me to ask, is the degree of injury actually accruing to

the enemies of Great Britain from her retaliating order? According to those orders, as now modified, and more especially taken into view along with them, the prohibitory law of this country, in relation to France, the essential difference between their repeal and their existence consists in this—That in the case of their repeal, as pledged by the arrangement of April, the trade of the United States might be carried on directly with the ports of Holland, whilst during their existence, as at present, it is to be carried on through the contiguous and neighbouring ports. To your own calculation, sir, I submit, whether the inconsiderable effect of this circuit on the prices in Holland and in the countries supplied through her, can any longer sustain the plea of inflicting distress on an enemy, or palliate the injuries done to a friend by a proceeding so contrary to his sentiments of justice, and which subject his regular commerce not only to inconvenient channels, but to all the abuses which may result from the suspicions, real or pretended, of interested cruisers. You cannot but be sensible, that a perseverance under such circumstances, in a system which cannot longer be explained by its avowed object, would force an explanation by some object not avowed. What object might be considered as best explaining it? An inquiry into which I do not permit myself to enter further than to remark, that in relation to the United States it must be an illegitimate object.

It remains to make a few observations which are due to the just interests of the United States, and which are invited by yours relating to the order in council of May last.

You seem to consider that measure as comprising the utmost precaution that was in the power of his Britannic majesty to take, for preventing losses, from his disavowal, of the engagement of your predecessor, to citizens of the United States, who had resumed their commercial pursuits on the faith of that act.

Without entering into a full view of the inadequacy of the order in that respect, I take the liberty of pointing out the following instances in which it falls essentially short of its declared intention.

1. The order does not provide for the important case of vessels returning with cargoes from the ports of Holland.

2. The exemption from interruption, of vessels bound from the U. States to Holland, was restricted by that order to such as should have departed prior to the 20th of July, at which date it is not certain that the order, which was not officially communicated until the 31st of that month, had even reached any one point of the United States. So that some vessels may have sailed between the limited date and the arrival of the order in the United States, and many from distant ports must have done so after its arrival, but before a knowledge of it had become general; all proceeding on the faith of the arrangement, yet all left by the order exposed to capture and condemnation.

3. The order does not provide for the important case of vessels which had sailed on the like faith, for Dutch ports, other than those of Holland.

4. It does not include in its provisions the extensive list of vessels going indirectly from the United States, but directly from foreign ports to those of Holland, nor vessels trading entirely from foreign ports to Holland, and in both those instances proceeding on the faith of the arrangement professed to be respected within the defined period.

It is true, in these last instances the vessels were not to be captured without an attempt, after contrary warning, to proceed to those ports. But I need not remind you that the injuries incident to the delay and to the breaking up of such voyages cannot but have been considerable, and will have resulted as manifestly from the disappointed faith in the arrangement, as in the case specially provided for, and consequently with all other losses fairly resulting from the same bona fide confidence in that act, they will fall within the just indemnification for which the principle, assumed in the order, is a formal pledge.

I conclude, Sir, with pressing upon your candid attention, that the least which the President could have looked for in consequence of the disavowal of a transaction such as was concluded by your predecessor and carried faithfully into effect by this government, was an explanation from yours of the disavowal, not through his minister disavowed, but through his successor—an explanation founded on reasons strong and

solid in themselves, and presented, neither verbally nor vaguely, but in a form comporting with the occasion, and with the respect due to the character and to the good faith of the disappointed party—that it has been found with much concern and with not less surprise, that you are charged with no such explanations—that you have apparently wished to bring the subjects, which have been formally and definitely arranged, into fresh negotiation, as if no such arrangement had taken place; that one of the cases thus slighted, viz. that of the frigate Chesapeake, is a case for which reparation, not denied to be due, had been previously so long withheld, or rather in which the aggression itself has been spun out, to the present moment, by the continued detention of the mariners, whose seizure, making a part of the original hostility committed against the American frigate, must be regarded in a light analogous to a continued detention of the ship itself;—that in the other case, viz. that of the orders in council, you are not authorised to tender explanations for the disavowal, or to propose any new arrangement, nor to conclude any agreement, but solely to receive and discuss propositions which might be made to you, not concealing, at the same time, that, to be satisfactory, they must include two conditions, both inadmissible—one altogether irrelevant to the subject, and the other requiring nothing less than a surrender of the inalienable function of the national sovereignty.

Notwithstanding these repulsive considerations, such is the disposition of the president to facilitate a final and comprehensive accommodation between the two nations, that he is ready, as I have already had the honor of signifying to you, to favor any mode of bringing about so happy an event that may be found consistent with the honor and the essential interest of the U. States.

I have the honor to be, &c.
Signed, R. SMITH.
Hon. F. J. Jackson, &c. &c. &c.

MR. JACKSON TO MR. SMITH.
Washington, 23d Oct. 1809.

Sir, The letter, which you did me the honor to address to me on the 19th inst. was delivered to me on the following day. I shall, without loss of time, transmit it to my court, where the various and important considerations which it embraces will receive the attention due to them. In the interval, I would beg leave to submit to you the following observations as they arise out of the communications that have already occurred between us.

In fulfilling a duty which I conceive to be due to my public character, I have never suggested, nor meant to suggest, that the mode of negotiating prescribed by you on this particular occasion—an occasion selected for the purpose of removing existing differences—was otherwise objectionable, than as it appeared to me to be less calculated, than it does to you, to answer the professed purpose of our negotiation.

It was against the general principle of debarbing a foreign minister, in the short space of one week after his arrival, and without any previous misunderstanding with him, from all personal intercourse, that I thought it right to protest. Since, however, I find by your letter, that it is not intended to apply that principle to me, I will only observe, that in the case which you mention to have occurred between Mr. Canning and Mr. Pinkney, the conferences were held under an expectation at least on the part of the former, of their leading to a written communication, whereas in ours, I, from the beginning, stated that I had no such communication to make. There is also this essential difference between the two cases, that Mr. Pinkney was charged to convey an important proposal to His Majesty's government, the particulars of which it might be very material to have correctly stated, whilst the object of that part of my conversation to which you seem to attach the most importance, was to say, that I was not charged to make any proposal whatever.

It could not enter into my view, to withhold from you an explanation, merely because it had been already given, but because, having been so given, I could not imagine, until informed by you, that a repetition of it would be required at my hands. I am quite certain that His Majesty's government having complied with what was considered to be the substantial duty imposed upon it on this

occasion, would, had this been foreseen, have added to the proofs of conciliatory good faith already manifested, the farther complacency to the wishes of the United States, of adopting the form of communication most agreeable to them, and of giving through me the explanation in question. I have therefore no hesitation in informing you, that His Majesty was pleased to disavow the agreement concluded between you and Mr. Erskine, because it was concluded in violation of that gentleman's instructions, and altogether without authority to subscribe to the terms of it. These instructions, I now understand by your letter, as well as from the obvious deduction which I took the liberty of making, in mine of the 11th instant, were at the time, in substance, made known to you; no stronger illustration therefore can be given of the deviation from them which occurred, than by a reference to the terms of your agreement.

Nothing can be more notorious than the frequency with which, in the course of a complicated negotiation, ministers are furnished with a gradation of conditions on which they may be successively authorised to conclude. So common is the case which you put hypothetically, that in acceding to the justice of your statement, I feel myself impelled to make only one observation upon it, which is, that it does not strike me as bearing upon the consideration of the unauthorised agreement concluded here, in as much as in point of fact Mr. Erskine had no such graduated instructions. You are already acquainted with that which was given, and I have had the honor of informing you that it was the only one by which the conditions on which he was to conclude, were prescribed. So far from the terms, which he was actually induced to accept, having been contemplated in that instruction, he himself states that they were substituted by you in lieu of those originally proposed.

It may perhaps be satisfactory, that I should say here that I most willingly subscribe, on this occasion, to the highly respectable authority which you have quoted, and I join issue with you upon the essentials which that authority requires to constitute a right to disavow the act of a public minister.

It is not immaterial to observe on the qualification contained in the passage you have quoted—as it implies the case of a minister, concluding in virtue of a full power. To this it would suffice to answer, that Mr. Erskine had no full power; and his act consequently does not come within the range of your quotation, although it cannot be forgotten that the United States have, at no very distant period, most freely exercised the right of withholding their ratification from even the authorised act of their own diplomatic agents, done under the avowed sanction of a full power.

I conceive that what has been already said, establishes beyond the reach of doubt or controversy, that His Majesty's minister did violate his instructions, and the consequent right in his majesty to disavow an act so concluded. That his Majesty had strong and solid reasons for so doing, will appear not only from his instructions having been violated, but from the circumstance that the violation of them involved the sacrifice of a great system of policy deliberately adopted and acted upon in just and necessary retaliation of the unprecedented modes of hostility resorted to by his enemy.

There appears to have prevailed throughout the whole of this transaction a fundamental mistake, which would suggest that his Majesty had proposed to propitiate the government of the United States in order to induce it to consent to the renewal of the commercial intercourse between the two countries; as if such had been the relations between Great Britain and America, that the advantages of that intercourse were wholly on the side of the former; and as if, in any arrangement, whether commercial or political, his Majesty could condescend to barter objects of national policy and dignity for permission to trade with another country.

Without minutely calculating what may be the degree of pressure felt at Paris by the difference in the price of goods whether landed at Havre or at Hamburg, I will, in my turn, appeal to your judgement, sir, whether it be not a strong and solid reason, worthy to guide the councils of a great and powerful monarch, to set bounds to that spirit of encroachment and universal dominion which would bend all things to its own standard? Is it nothing in the present state of the world, when the agents of France authoritatively an-

nounce to their victims, "that Europe is submitting and surrendering by degrees," that the world should know that there is a nation which by that Divine goodness so strongly appealed to in the paper to which I allude, is enabled to falsify the assertion? Is it not important at such a moment, that Europe and America should be convinced, that, from whatever countries honorable and manly resistance to such a spirit may have been banished, it will still be found in the sovereign of the British nation, and in the hearts of his subjects?

As to the precautions taken in England to insure from injury upon this occasion the citizens of the United States, and which appear to you to be even yet insufficient, I am confident that in every doubtful case the usual liberality of our tribunals will be exercised in determining upon the circumstances of it; and it was at Mr. Pinkney's express requisition, that additional instructions were given to the commanders of his majesty's ships of war and privateers, to extend to vessels trading to the colonies, plantations and settlements of Holland, the same exemption from capture and molestation, as was granted to vessels sailing for any of the ports of Holland.

On the subject of return cargoes, from those ports, I must observe, that although it was intended to prevent as far as practicable the inconvenience likely to be created by the unauthorised agreement made here in April last, yet it was not and could not be intended to obviate all possible inconveniences, even such as might have arisen if no such agreement had ever been made.

If an American vessel had sailed from America for Holland in time of profound peace, or in time of war, the ports of Holland not being at the date of sailing under blockade, it might yet have happened that in the period between the commencement of such voyage, and the arrival at the port of destination, a blockade might have been established before that port. The vessel arriving, would, in that case, have been warned not to enter the port, and would have been turned away with the loss of the whole object of the voyage. This would be no extraordinary hardship, and would afford no legitimate ground of complaint.

The order in Council is far less strict than such a blockade would be, for as much as it provides for the original voyage, commenced in expectation of being admitted to the port of destination, by permitting the entry into the ports of Holland; and it is no just ground of complaint that it does not superadd to that permission the liberty to re-export a cargo of the enemy's goods or produce.

I beg leave briefly to recapitulate the substance of what I have had the honor to convey to you as well in a verbal, as in written communications.

I have informed you of the reasons of his majesty's disavowal of the agreement so often mentioned; I have shewn them, in obedience to the authority which you have quoted, to be both strong and solid, and such as to outweigh, in the judgment of his majesty's government, every other consideration which you have contemplated; I have shewn that that agreement was not concluded in virtue of a full power, and that the instructions, given on the occasion, were violated.

Beyond this point of explanation which was supposed to have been attained, but which is now given, by the present letter, in the form understood to be most agreeable to the American government, my instructions are prospective; they look to substituting for notions of good understanding, erroneously entertained, practical stipulations on which a real reconciliation of all differences may be substantially founded—and they authorise me, not to renew proposals which have already been declared here to be unacceptable, but to receive and discuss any proposal made on the part of the United States, and eventually to conclude a convention between the two countries. It is not, of course, intended to call upon me to state as a preliminary to negotiation, what is the whole extent of those instructions; they must, as I have before said, remain subject to my own discretion, until I am enabled to apply them to the overtures, which I may have the honor of receiving from you.

I have the honor to be,
With great respect,
Sir,
Your most obedient humble
Servant,
J. F. JACKSON.
The Hon. Robert Smith,
25, St. Paul's Church-yard.