

DOCUMENTS

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

(CONTINUED.)

MR. SMITH TO MR. JACKSON.

Department of State, Nov. 1, 1809.

Sir, Your letter of the 23d ult. which was duly received, would have been sooner acknowledged, had I not by sickness been rendered for several days utterly unfit for business.

Although the delay and the apparent reluctance in specifying the grounds of the disavowal of the arrangement with respect to the orders in council, do not correspond with the course of proceeding deemed most becoming the occasion; yet as the explanation has at length been made, it only remains, as to that part of the disavowal arrangement, to regret that such considerations should have been allowed to outweigh the solid objections to the disavowal; it being understood, at the same time his Britannic majesty perseveres in requiring as indispensable conditions on the part of the United States, an entire relinquishment of the right to trade with enemies' colonies, and also permission to the British navy to aid in executing a law of Congress; pretensions, which cannot but render abortive all proposals whatever upon this subject, whether made by the United States or by his Britannic majesty.

Whilst you have deemed it proper to offer an explanation with respect to the disavowal of one part of the arrangement, I must remind you that there is not to be found in your letter any like specification of the reasons for the disavowal, nor particularly is it shewn that instructions were violated, as to the other part, viz. the case of the Chesapeake; the case in which, in an especial manner, an explanation was required, and in which you only professed to have authority to make to this government any overtures.

For the first time it is now disclosed that the subjects arranged with this government by your predecessor, are held to be not within the authority of a Minister Plenipotentiary, and that, not having had a "full power distinct from that authority, his transactions on those subjects might of right be disavowed by his government." This disclosure, so contrary to every antecedent supposition and just inference, gives a new aspect to this business. If the authority of your predecessor did not embrace the subjects in question, so as to bind his government, it necessarily follows, that the only credentials yet presented by you, being the same with those presented by him, give you no authority to bind it; and that the exhibition of a "full power" for that purpose, such as you doubtless are furnished with, is become an indispensable preliminary to further negotiation; or, to speak more strictly, was required in the first instance by the view of the matter now disclosed by you. Negotiation without this preliminary would not only be a departure from the principle of equality which is the essential basis of it, but would moreover be a disregard of the precautions and of the self-respect enjoined on the attention of the United States by the circumstances which have hitherto taken place.

I need scarcely add, that in the full power alluded to, as a preliminary to negotiation, is not intended to be included either the whole extent or any part of your instructions for the exercise of it.—These of course, as you have justly remarked, remain subject to your own discretion.

I abstain, Sir, from making any particular animadversions on several irrelevant and improper allusions in your letter, not at all comporting with the professed disposition to adjust in an amicable manner the differences unhappily subsisting between the two countries. But it would be improper to conclude the few observations to which I purposely limit myself, without adverting to your repetition of a language implying a knowledge on the part of this government that the instructions of your predecessor did not autho-

rise the arrangement formed by him.—After the explicit and peremptory asseveration that this government had no such knowledge, and that with such a knowledge no such arrangement would have been entered into, the view, which you have again presented of the subject, makes it my duty to apprise you, that such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes to itself.

I have the honor to be, &c.

Signed, R. SMITH.

Hon. F. J. Jackson, &c. &c. &c.

MR. JACKSON TO MR. SMITH.

Washington, 4th November, 1809.

Sir, When I forwarded to my court your letter of the 19th ultimo, and the answer which I returned to it, I imagined, and I may add, I hoped, that the retrospective correspondence into which you thought it necessary to enter with me, had been closed. You will, no doubt, recollect with what reluctance I acquiesced in your intimation on this head; not, as I believe has been seen, from any difficulty in maintaining the justice of the cause which is entrusted to me, but because I was, and still am of opinion, that this sort of correspondence is not calculated to remove differences and soothe irritations of the most unfortunate tendency. As, however, I had no choice but to renounce for the present, the hope of effectuating this desirable object, or to pursue it in the manner prescribed in your letter of the 9th ultimo, I am now unwillingly compelled to enter upon the consideration of another letter from you under date of the 1st instant, which but too strongly confirms the opinion I before entertained.

Since, Sir, it has been judged expedient to confine to a written form this important and interesting discussion; since that mode has been declared by you to be indispensable, I will first appeal to the written communications which have passed between us and I do this with the greater satisfaction, because I consider it to be the chief cause of the present remarkable state of things, that in speaking of engagements contracted, or supposed to have been contracted, between the two countries, *understandings, or implied engagements*, have been allowed to take place of written compacts, and have been considered, in some instances, as having the same validity.—It is furthermore necessary to place in the most unequivocal light a topic, which I observe to be constantly and prominently re-stated in your letters, notwithstanding the repeated, but as it should seem, fruitless endeavours used in mine, to clear it from the slightest shadow of obscurity.

You say "that it is understood that his Britannic majesty perseveres in requiring as indispensable conditions on the part of the United States, an entire relinquishment of the right to trade with the enemies' colonies, and also a permission to the British navy to aid in executing a law of Congress."

This same statement is contained in your letter of the 9th inst. and represented as the substance of what had fallen from me in our previous conferences. In my answer to that letter, I took the liberty of shewing that such a supposition was erroneous, and I have looked in vain to my letter of the 23d, to find in it any suggestion of a similar tenor. I believe, therefore, that by reference to my two letters you will find, that the statement now again brought forward is contained in neither of them, that it made no part of my previous conversations with you, and that I have in no way given room to suppose, that I ever made any such statement at all.

That before the orders in council can be revoked, their object must be obtained in some other way, is unquestionably true—but you may be assured, Sir, that there is no wish whatever entertained in England, that the British Navy should be employed in executing a law of Congress. If the proposal that was made upon that subject, and made, as you now know, because it was believed to be acceptable here, had been adopted, and had become a matter of compact between the two countries, and thereby a part, not of the law of Congress, but of the public law binding upon both parties, and which both would have had a common interest in seeing duly executed—in that case the agency of the British navy would not have had the invidious aspect, which is now attempted to be given to it. At present there is no engagement between the two

countries, no laws of Congress which bear a reference to any such engagement, and consequently, it can't be wished to take any share whatever in the execution of those laws.

In regard to the colonial trade, I need only observe, that all, or nearly all, the enemies' colonies are blockaded by British squadrons—it can't therefore be so much an object of solicitude as you imagine, to obtain the relinquishment of the trade of any country, to those colonies. On the contrary, you will find it stated in my letter of the 11th ultimo, to be a "matter of indifference whether the order in council" (on this subject) "be continued, or an arrangement by mutual consent substituted in its room."

When I informed you that the agreement concluded here in April last, had been framed in deviation from the instructions given for the occasion, my explanation was intended to apply to both parts of that agreement. That nothing, required by the most scrupulous accuracy, may be wanting, I now add, that the deviation consisted in not recording in the official document signed here, the abrogation of the President's Proclamation of the 2d July, 1807, as well as the two reserves specified in the paper of the Memoranda enclosed in my official letter to you of the 27th ultimo.

There is another motive for the disavowal of the part of the arrangement, considered to be so strong and so self-evident upon the very face of the transaction, that I am not commanded to do more than indicate it in the manner I have already done.—By this forbearance, his majesty conceives that he is giving an additional pledge of his sincere disposition to maintain a good understanding with the United States.

I am somewhat at a loss to give a distinct reply to that part of your letter which relates to Mr. Erskine's authority to conclude with you in virtue of his general letter of credence—because I do not very distinctly understand the tendency of it. I never before heard it doubted that a full power was requisite to enable a minister to conclude a treaty, or that a mere general letter of credence was insufficient for that purpose.

If it were otherwise, and a government were in all cases to be bound by the act, however unauthorised, of an accredited minister, there would be no safety in the appointment of such a minister, and ratifications would be useless.—No full power was given in the present case, because it was not a treaty, but the materials for forming a treaty that was in contemplation.

In his dispatch of the 23d of January, Mr. Secretary Canning distinctly says to Mr. Erskine—"Upon receiving through you on the part of the American government a distinct and official recognition of the three above mentioned conditions; his majesty will lose no time in sending to America a minister fully empowered to consign them to a formal and regular treaty."

This minister would, of course, have been provided with a full power; But Mr. Erskine was to be guided by his instructions, and had the agreement concluded here been conformable to them, it would without doubt have been ratified by his majesty. I must beg your very particular attention to the circumstance that his majesty's ratification has been withheld, not because the agreement was concluded without a full power, but because it was altogether irreconcilable to the instructions on which it was professedly founded. The question of the full power was introduced by yourself to give weight by a quotation from a highly respected author, to your complaint of the disavowal, in answer to which I observed that the quotation did not apply, as Mr. Erskine had no full power. Never did I imagine, or any where attempt, to rest the right of disavowal upon that circumstance; indubitably his agreement would, nevertheless, have been ratified, had not the instructions, which in this case took the place of a full power, been violated.

I am surprised at the transition by which it appears to you that this part of the subject is connected with the authority empowering me to negotiate with you. It will not, I dare say have escaped your recollection that I informed you at a very early period of our communications, that in addition to the usual credential letter, his majesty had been pleased to invest me with a full power under the great seal of his kingdom, for the express purpose of concluding a treaty or convention. I well remember your testifying your satisfaction at the circumstance; and I have only now to add,

that I am ready, whenever it suits your convenience, to exchange in full power against that with which you shall be provided, for the progress of our negotiation.

I am concerned, Sir, to be obliged a second time to appeal to those principles of public law under the sanction and protection of which I was sent to this country. Where there is not freedom of communication in the form substituted for the more usual one of verbal discussion, there can be little useful intercourse between ministers; and one, at least, of the epithets which you have thought proper to apply to my last letter is such as necessarily abridges that freedom. That any thing therein contained may be irrelevant to the subject, it is of course competent in you to endeavor to shew, and as far as you succeed in so doing, in so far will my argument lose its validity—but as to the propriety of my allusions, you must allow me to acknowledge only the decision of my own sovereign, whose commands I obey, and to whom alone I consider myself responsible. Beyond this it suffices that I do not deviate from the respect due to the government to which I am accredited.

You will find that in my correspondence with you, I have carefully avoided drawing conclusions that did not necessarily follow from the premises advanced by me, and least of all should I think of uttering an insinuation where I was unable to substantiate a fact. To facts, such as I have become acquainted with them, I have scrupulously adhered, and in so doing I must continue, whenever the good faith of his majesty's government is called in question, to vindicate its honor and dignity in the manner that appears best calculated for that purpose.

I have the honor to be, with respect,

Sir,

Your most obedient

Humble Servant

F. J. JACKSON.

The Hon. R. Smith, &c. &c. &c.

(TO BE CONTINUED.)



Congressional Proceedings.

December 6.

Mr. Nicholson laid upon the table a resolution to provide for a law, for a general national establishment of banks throughout the United States, and that the profits arising from the same be appropriated for the "general welfare," in constructing roads, canals, and establishing seminaries of learning, &c.

A committee was ordered to bring in a bill for taking the third census of the U. States.

Mr. McKim's resolution, prohibiting American vessels from trading under foreign licence was called up and referred to the committee of commerce and manufactures.

Much minor business was transacted and arranged.

Mr. Nelson proposed, and a committee was appointed to enquire into the expediency of making provision by law, for the relief of disabled and superannuated officers and privates of the late revolutionary army, and the present army of the United States.

A petition for a uniform system of bankruptcy, caused considerable debate, most of the speakers were decidedly opposed to the object of the petition.

A resolution requesting the president to favor the house with such information as he may be possessed of, and which it may be proper to communicate, respecting the capture, seizure and condemnation of vessels and merchandise of the United States, made under the order of the government of Denmark, Great Britain and France, not heretofore communicated to congress, was passed.

December 7.

Mr. Morrow, from the committee of public lands, reported a resolution for reviving a law respecting British refugees—adopted.

A report of Gen. Alexander Hamilton, when Secretary of the Treasury in 1791, on the subject of manufactures, was ordered to be printed.

A committee was appointed to bring in a bill to extend the jurisdiction of the superior courts to the territories of the U. States.

Mr. Bacon laid upon the table three resolutions, the first providing against the use of opprobrious or vilifying language in debate, with respect to any member, or call in question the integrity of his motives, or those of either branch of the government, except in cases of impeachment, &c. The second was to provide against challenges being received, carried or sent to or by members during the session under pain of expulsion from the house. The third provided against personal assault or violence upon any mem-

ber during his attendance at the seat of government.

Mr. Van Horn offered five resolutions, to confine the exports of American articles to American bottoms exclusively, 2d. To confine American shipping to exports of American articles alone. 3d. To lay a discriminating duty in favour of American bottoms in furnishing our imports. 4th. To prevent American vessels from trading from one foreign port or place to another foreign port or place. 5th. To modify or repeal the law allowing drawbacks. They were ordered to be printed and lie on the table.

FOR SALE

The following tracts of valuable lands, situated in the county of Berkeley, Virginia, only about one hundred miles distant from Annapolis or Baltimore, viz.

A tract of 500 acres situated on an inclined plain, about thirteen miles distant from Martinsburgh, the County town, and six or seven from the Potomack River, it is heavily timbered, and has a number of Springs on it, one of which is remarkably large and good.

Also, a tract of four hundred acres, about seventeen or eighteen miles from Martinsburgh, within a mile or two of the Potomack river, and not more than seven or eight from the warm Springs at Bath, well timbered and has several springs.

Thirdly, a tract of three hundred and seventy acres nearly adjoining the first mentioned, part of which is low land, with a considerable stream of water running through it, supposed sufficient for a Grist mill.

And fourthly, a small farm of about one hundred and twenty acres nearly half of which is cleared, with a house and barn on it, but which for want of occupancy for several years, needs some repair, the land is mostly intervale and has a run of water passing through it.

The above mentioned Lands being situated nearly in a central situation between Martinsburgh, Winchester, Shepherd's Town and Charlestown, affords a neighboring market for its productions, the neighbourhood of the river Potomac presents an easy means of intercourse with Alexandria, Georgetown, & Washington, and the large market of Baltimore is distant only one hundred miles, and that mostly turnpike road—all which advantages, especially when it is considered that Berkeley is esteemed one of the most fruitful and healthy counties in Virginia, make the above lots very desirable property. For terms which will be reasonable, apply at this office.

This is to give Notice,

That the Subscriber of Prince George's county, hath obtained from the Orphans court of Prince Georges court, in Maryland, letters of administration on the personal estate of Allen Bowie Duckett, late of said county, deceased; all persons having claims against said deceased, are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, at or before the fifteenth day of June next, they may otherwise by law be excluded from all benefit of said estate, all persons indebted to said deceased, are requested to make immediate payment, given under my hand this 15th day of December.

RICHARD DUCKETT.  
December 15, 1809. GwLaw.

This is to give Notice,

That the Subscriber of Prince George's County, has obtained from the Orphans court of Prince George's county in Maryland, letters of administration *de bonis non*, on the personal estate of Thomas Duckett of said county deceased; all persons having claims against the said deceased, are hereby warned to exhibit the same with the vouchers thereof, to the Subscriber, at or before the fifteenth day of June next, they may otherwise be excluded from all benefit of said estate, all persons indebted to said estate are requested to make immediate payment. Given under my hand this fifteenth day of December.

RICHARD DUCKETT.  
December 15, 1809. GwLaw.

Ann Arundel County, to wit.

I HEREBY CERTIFY, THAT JOHN SMITH brought before me the Subscriber, one of the justices of the peace for said county, as a stray, trespassing on his enclosures near Annapolis, A BAY MARE, about six or seven years old, near thirteen hands high, a star in her forehead, a snip on the nose, and a small saddle spot; her mane and tail crop short; paces and canters. Given under my hand this 9th day of December, 1809.

Gideon White.

The owner of the above described mare is requested to come, prove property, and take her away.

JOHN SMITH.  
December 16. 40

G. M. JEFFERIS,  
No. 66, Market street,  
BALTIMORE,

Has just received from M'Allister's Manufactory, Philadelphia, an elegant assortment of  
Crap and Switch Whips,  
Which will be sold at a discount of 2 per cent from retail prices to those who purchase by the quantity.